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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 87

MIKHAIL NICHOLAS GORIN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 88

HAFIS SALICH, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR CERTIORARI FILED MAY 21, 1940.

CERTIORARI GRANTED JUNE 2, 1940.

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Nos 9135, 9136

United States
Circuit Court of Appeals

For the Ninth Circuit.

No. 9135

MIKHAIL NICHOLAS GORIN, Appellant,
vs.

THE UNITED STATES OF AMERICA,
Appellee.

No. 9136

HAFIS SALICH, Appellant,
vs.

THE UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 329 to 706

**Upon Appeals from the District Court of the United
States for the Southern District of California,
Central Division.**

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HAFIS SALICH,

called as a witness on his own behalf, being sworn,
testified as [407] follows:

Direct Examination

By Mr. Stone:

I was born in Moscow, Russia, May 24, 1905. My parents were of middle-class merchant guild, having a store, and my father was commonly known here as a middle-class business man. I went to school, to the Moscow Imperial Academy in Moscow, Russia. We lived in Moscow proper, up to about 1917, when we moved to the city of Kazen. That is about seven or eight hundred miles due east from Moscow on the banks of the river Volga. That was before the October revolution, after the February revolution, however. I lived there until some time the latter part of the fall of 1918. My parents left me and went to Siberia with the Czechoslovakian white forces which were then on the retreat from the central part of Russia, and they left me in the care of my grandmother. I did not have any association with the government of Russia at that time, I was a small boy. I rejoined my parents when they returned in 1920. From the time they came back I was with them right on up to the time we came here to this country together. They rejoined me in the city of Kazen where we remained about two or three months, maybe. Kazen at that time was in the control of the Red forces. We left Kazen in the Spring of 1920 and went

(Testimony of Hafis Salich.)

across Siberia to Manchuria. We were unable to take any of our property with us. We left relatives behind in Russia, my uncles, aunts and numerous second aunts and second cousins and second uncles. We lived in Harbin, Russia, and left there the latter part of 1921 or the early part of 1922, and went to Japan where we lived at Yokohama. We lived there until after the big earthquake of September, 1923, when we came to this country. My father is employed in a downtown building in San Francisco as a night janitor. I joined the Berkeley Police Department July 1, 1930, and served as an active officer until August 15, 1936, my total service being a little over six years. I lived [408] in Berkeley at the time. While living there I became acquainted with a man by the name of Aliavdin. I met him through a personal friend of mine who had met him through his official capacity while he was employed in Honolulu. Aliavdin was Vice Consul for the U. S. S. R. in San Francisco at the time I met him. I met him in the fall of 1935. He was in San Francisco several times, two or three times that I saw him up there in 1935 and in 1936. But to the best of my knowledge he had both San Francisco and Los Angeles within his jurisdiction. Therefore, his duties were divided, I believe, between these two cities. I applied for a place with the United States Naval Intelligence Service about three or four months, I believe, be-

(Testimony of Hafis Salich.)

fore I received notice of acceptance from Under-sheriff Brearton of San Diego County. My first application was made, I suppose, around April or May of 1936. I discussed that application with Aliavdin at a luncheon that I had with him at his invitation at which just he and myself were present. This was either the latter part of 1935 or early part of 1936. I would say it was in the spring of 1936. We were discussing opportunities in the police department. In connection with that discussion I mentioned to him that it was entirely possible I might not be with the Berkeley police department any longer, that I had recently made an application for service with Naval Intelligence in Southern California, and that I might get that position as a result of my application. I believe my application was accepted some time either in July or August. My last day of active service with the Berkeley Police Department was on August 15, to the best of my recollection. We left Berkeley August 16, I believe, and with intermediate stops went down to San Diego where I interviewed Commander Davis. I reported for duty on Wednesday afternoon, shortly after one o'clock, August 19th, 1936. I did not see Commander Davis at all on the day I reported in San Pedro. He did not come up from San Diego with me and did not appear in San Pedro at all to my knowledge. I saw Aliavdin after I joined the [409] Naval Intelligence Service.

(Testimony of Hafis Salich.)

The first time I saw him in Los Angeles was, I believe, at some hotel; I think that he told me he came down to Los Angeles for the specific purpose of opening up the vice-consulate for the U. S. S. R. I was directed by higher superiors to secure information concerning one Levanevsky, a Russian flyer, the directions being given by Lt. Commander Roachefort. I told him that through Mr. Aliavdin I met the flyer Levanevsky and his group; whereupon Mr. Roachefort asked that if I could see or hear anything of import, to let him know. I did furnish the office a report of my observation while I was with that group. I secured the information from Mr. Aliavdin, and through my association, brief as it was, with that group. I am not sure whether Mr. Aliavdin was vice consul in this city but either he was that at the time or acted in that capacity representing the interests of the citizens of the U. S. S. R. Mr. Stanley was not connected with the Naval Intelligence Service during that period. I went with Mr. Stanley to a house at 451 South Ardmore to see the Russian flyers, and remember his testimony in that regard. The publicity given the Russian flyers after their arrival in Los Angeles created a desire in my mind, as well as in the minds of other people, I imagine, the desire to see them. I then asked Mr. Stanley whether or not he, too, desired to see them. Upon his agreement, we went up to the address given, rang the

(Testimony of Hafis Salich.)

doorbell, and a gentleman by the name of Yudin answered the bell and stated in Russian that because of the fact the flyers were extremely tired, it was impossible to see them.

Whereupon it was stipulated that some Russian flyers arrived here in July of 1937.

(Witness continues) I met Mr. Gorin but briefly about the time of that incident or after; if I am able to correct myself, I believe I met Mr. Gorin after because at that time I didn't know Mr. Gorin lived there. I turned into the office of the Naval [410] Intelligence Service the information secured by me in regard to these two groups of Russian flyers. Yudin was either an office manager or acted as vice consul for the U. S. S. R. in Los Angeles at that time. I met Mr. Gorin in the summer of 1937 after this first incident that we mentioned. The circumstances under which I met him were that Lt. Commander Roachefort instructed me to contact someone in the Soviet Consulate to determine as to what the activities of a certain Soviet official named Kaganovich were in Los Angeles. In response to that instruction I called at 451 South Ardmore and eventually contacted Mr. Gorin. It was either in July or August of 1937 or thereabouts. I had never met Mr. Gorin before that time. No one else except myself and Mr. Gorin was present and the conversation was of a social character and touched general topics as well as the

(Testimony of Hafis Salich.)

activities of the man Kaganovich. I made a report of that information to our office. I next met Gorin rather late in the fall of 1937. This meeting was occasioned by information through my wife that a Mr. Gorin had called and had a letter for me. I called on him either the following day or a day or two afterwards at 451 South Ardmore. I did not see anyone outside of Mr. Gorin there; Mr. Stanley was there and his friend from Porto Rico. I didn't go inside the house. I rang the doorbell and Mr. Gorin came out and after a short conversation, we joined Mr. Stanley and his friend. He stated that he was busy just then; that he had a letter for me from Mr. Aliavdin and that he would like to see me at some later occasion.

With reference to the testimony of Roy Hanna, I absolutely did not at any time open the safe or look in the safe in the office or investigate any papers found in that safe. My duties were many and varied. We were to go out and get the information, any kind of information, in which the Commander was interested. At that time it was mostly Japanese, although we were interested in representatives of other nations as well. [411]

By Mr. Stone:

Q. Were you requested to obtain specific information that was outlined to you with each assignment or were you given a general roving assignment?

(Testimony of Hafis Salich.)

A. Both, the office would receive an assignment —this is hearsay so far as I am concerned— either from San Diego or Washington, and the Commanding Officer then would turn that assignment over to the investigators instructing them to comply with the assignment. The instructions also were that the assignment was to be carried through in the best manner possible and to the best of the investigator's judgment. Besides that, the investigators were also to be on the lookout for any information which might come to their attention and which might be of possible interest to the office. The duties were mostly of investigative character, although, at a number of occasions the investigators were also called upon to perform—should I say—private work for the Commanding Officer of the organization. I was a clerk for one month while Chief Yeoman Hanna was away. My duties were to keep up on the office work, stenographic work, typing and other incidental duties in connection with secretarial work as conducted for the Commanding Officer. I was expected to keep up generally with the work of the office and keep myself acquainted with what the office was doing. Mr. Stanley and I would come in the office and get that yellow onion skin file to which reference was had at this trial before and read over the copies of that file for the previous day or two that we had not been in the office. I don't remember any specific orders

(Testimony of Hafis Salich.)

as to that; but it was understood that we were to do that. We would do it every other day. We went into the office three times a week. There never was any occasion on a Saturday morning when Mr. Hanna entered the office to find me going through his desk.

The next time I saw Gorin after the time when Stanley and I and his Porto Rican friend went to 451 South Ardmore was a few days [412] after that. It was in the evening and Mr. Gorin and myself were present. I believe I called on him that night, and having had a few unpleasant words with Mrs. Salich, I think that I knew she might follow me so Mr. Gorin and I went to some place near that vicinity and spent some little time together. I called on him first at his house and then from there went with him to another place in the vicinity. It was a cocktail lounge. This was some time in January, because a day or two after that, Mrs. Salich and I separated; it would be either a day or two before the 8th of January. At that meeting, among other things that we talked about, Gorin also mentioned the fact that they were interested in matters pertaining to the Japanese activities, and Japanese activities only. The conversation was in Russian; any word meaning interested or was curious about, would probably do. I told him that I did not think there was anything at all in my knowledge, or to which I had access that would be of any possible

(Testimony of Hafis Salich.)

benefit to anyone, and that therefore I would discourage any such thought on the part of anyone, that there might be anything of value or benefit in my possession from the standpoint of information concerning the Japanese. I discussed that meeting with Mr. Stanley, the very first time I saw him. That meeting was also discussed with Lt. Commander Roachefort at the office in San Pedro, Mr. Roachefort and Mr. Stanley being present. This was either the following day or the day after the conversation took place. I acquainted Mr. Roachefort with what Mr. Gorin told me and Mr. Roachefort showed a mild interest. Now, I am not very sure whether this conversation took place at that meeting or a meeting or two afterwards. Mr. Roachefort said, to my accounting of what conversation took place between me and Mr. Gorin, "That sure, we will exchange information with him, but will give information that he can get in either newspapers or magazines, but meantime you try and see just what sort of information he has been able to get on the Japanese Consulate. See if you can jar him loose [413] from it." That is the expression that he used. I am not very sure whether Mr. Stanley was present at that conversation or not, because shortly—about that time Mr. Stanley, I believe, took a week's absence from the office. However, Lt. Commander Roachefort and myself were there, for sure. I am not sure if Mr. Stanley

(Testimony of Hafis Salich.)

was there at the time that the conversation took place where Mr. Roachefort said that, "Sure, we will exchange information," et cetera. However, Mr. Stanley was present at an occasion or two when I discussed Gorin with Mr. Roachefort. Mr. Gorin gave me a letter of introduction from Aliavdin the first night I met him. This was a letter introducing Mr. Gorin to me, and stating that Mr. Gorin was a good personal friend of his, and that I might be able to enjoy good social contact, or words to that effect. It was purely a letter pertaining to social correspondence more than anything else. I believe the next time I saw Mr. Gorin was either a few days or a week after that. One of the meetings took place at Perino's when Mr. Gorin and I had lunch together. No one else was present. Mr. Gorin reiterated his desire to know as to the Japanese activities, also his thought that I may be in a position to furnish that information. At this meeting, as well as at other meetings that took place between me and Gorin, at that time I repeated my doubt as to whether or not any of the information that I might possibly gain in connection with my duties would be of no possible value or benefit to anyone. I believe his argument was that some of this stuff might not be of any value on the whole, but there might be an item or two which might be connected with something in which they were interested. Mr. Gorin also stated that even if the

(Testimony of Hafis Salich.)

information seemed to be of no possible benefit to me at the time, it would still be of indirect benefit to the United States of America, because of the common ground in which the American and Russian interests met with respect to Japan. He also stated, to my assurance, that they felt I was a patriotic and loyal American [414] citizen, and that they realized that, that they praised that trait in me, and that they had nothing whatsoever against this country except a feeling of profound respect and friendship and gratitude for what this country has done for them from the standpoint of technical instructions, as well as assuming the attitude of a professor toward a student who was willing to learn new and progressive methods of industrialization. There was also mention made by him of financial assistance which I declined categorically at the time. He stated that if there were any expenses in connection with this work, or any incidentals, why, he would be glad to take care of them. I am not so sure in my mind now as to whether or not the offer on his part was made with respect to financial gain on my part, or with respect to helping with the actual expenses of the work in which he, too, might benefit to a certain extent. He said that anything pertaining to Japanese was of interest to them. I don't believe he ever mentioned anything of any specific instance, of any specific nature. He reiterated his insistence that it was only the Jap-

(Testimony of Hafis Salich.)

anese they were interested in; that they were not interested in anything pertaining to this country. In fact, to be on the cautious side, I mentioned to him that after all I was a patriotic citizen, and he said that at no time would they place me in jeopardy with respect to this country, and that at no time did they want anything concerning this country, or against this country. I believed Mr. Gorin. I discussed my meetings with him at every stage of the game with either Mr. Stanley or Mr. Roachefort, or both, and discussed the luncheon meeting with Mr. Stanley the following day. In fact, Mr. Stanley knew I was going to lunch with Gorin that day. I believe this discussion was in my apartment. When I came down I telephoned the office and I told Stanley that I would not be able to have luncheon with him that day, and I believe he said, "Yes, you are having luncheon with Mr. Gorin today, aren't you?" I discussed the meeting at Perino's with Commander Roachefort, Mr. [415] Mr. Stanley also being present. This was either the following day or the day after the meeting took place. I told Mr. Roachefort that I had lunch with Mr. Gorin at Perino's, and that Mr. Gorin reiterated his desire to obtain Japanese information, and that he also reiterated his offer of financial help. After that there was some discussion in the office of the matters pertaining to other subjects. Then, as Mr. Stanley and I were leaving, as an afterthought, I asked Mr. Roachefort as to what he wanted me to do with respect to Mr.

(Testimony of Hafis Salich.)

Gorin, to which Mr. Roachefort said, "Try to determine the exact proposition that he makes to you, and the next time you go up to see him take Stanley along with you." I believe Mr. Roachefort said "We will give him information which is of no value. See what he knows about the Japanese Consulate. See if we can't jar it loose from him." Within the next day or two I had a conversation with Mr. Stanley either in an automobile or my apartment. I said to Mr. Stanley that Mr. Gorin was after that information, that he wants to pay some money for it, to which Mr. Stanley said, "Sure, I can make use of some extra money. Let's find out what he wants." We both agreed that because of the specified sum of expense money which covered the car only, that possibly some money would come in handy to cover some extra expense in connection with the work. On the day that Commander Roachefort suggested I should take Stanley up the next time I saw Mr. Gorin, in the automobile coming back from San Pedro, I said to Mr. Stanley, commenting on the remarks, that it would spoil my contact with Gorin, with which he agreed. He said that would make him suspicious and naturally spoil the contact with him altogether. The next time I discussed Mr. Gorin with Mr. Stanley was at one time, when Lieutenant Claiborne asked me to get some information about the Russian engineers at the Douglas Aircraft plant, I told Mr.

(Testimony of Hafis Salich.)

Stanley, "This assignment, you needn't worry about. I will take care of it with Mr. Gorin." And he said that he agreed to it and it was understood between us that [416] I was to take care of that particular assignment that particular evening; and I believe in the presence of Mr. Stanley I telephoned Mr. Gorin and made an appointment to see him that particular evening, which I did. Upon getting the information from him, I made the report to Lt. Claiborne the following day and informed him that the information came from Mr. Gorin. I believe I saw Gorin again some time either in March or April of 1938. I had two or three or four meetings with him either the first part of 1938 or beginning from the last part of 1937, and there was a hiatus of about a month and a half when I did not see him. There were a couple of weeks that I never saw him, that is a period of time during which I don't believe I saw him. I don't recall exactly where the meeting of March of 1938 took place. I believe we stopped some place in the western part of the city for a little conversation. No one else was present except myself and Gorin. To the best of my recollection I think we went over the former ground of conversation which we covered concerning his desire for information pertaining to the Japanese. At that time, I believe I agreed that I should furnish him with information pertaining to the Japanese. I don't recall what was said at that time, but to the best of my recollection, Mr.

(Testimony of Hafis Salich.)

Gorin was again very emphatic that his desire had nothing to do with anything against this country, and that if anything it was of benefit to this country. As I stated, he said, under no circumstances would the fact that Japanese information was given him be against this country, but that if anything it would be of benefit to this country because of the common plane on which the interests of the two countries met; namely, the possible menace from the third power, Japan. I mentioned the fact that I was separated from my wife; that I found it rather difficult for me to maintain my status of living with the handicapped financial position which I was in at the time. Also, I mentioned that offhand there was a large—either \$120 or \$130 gasoline bill, which I had no way [417] of meeting. And I believe it was then that suggestion came I should accept a financial assistance to take care of partially the money which was then paid by me to Mrs. Salich. I believe it was Mr. Gorin that said it to me. I thanked him, and said that I would accept the assistance, but then I told him that I would consider that merely a loan; to which he said that it was perfectly all right if I did consider it a loan, but that they didn't wish to stand over me harping for immediate payment of the money. I then told them that as soon as I was straightened out with my financial difficulties, at that time I would resume paying him the money that he had given me. I told him that the agreement ran with my wife as

(Testimony of Hafis Salich.)

late as February 1, 1939, after which time I would have no need whatsoever for any further financial assistance, and that I intended to start repaying for the loan. I also told him that I intended to use part of the money on the Navy business; and also I asked him if at any time at all the office desired information concerning the Russian activities, would he be adverse to furnishing it. He said that he would be pleased to furnish any information that he could possibly furnish, and that the office was interested in. At that conversation, I remember I gave him one item of information, which was secured by me directly, and which was the account of a meeting of the Far East Research Institute, a Japanese second generation organization. The report dealt on the appearance at the meeting of the Far East Research Institute of an English captain, whose name escapes my mind now, but who was sponsored by either the Japanese Consul, Ota, at the time, or Herman Schwinn of the Deutscheshaus. The report also gave briefly as to what was said by the British captain of some sort or other, and I believe the report was very much anti-Semitic and somewhat anti-American as to sentiments expressed by this captain. I gave him no other information that night and he gave me none. The next time I saw him was, I believe, about three or four weeks afterward, it would be either April or May. I believe [418] that meeting took place at some restaurant on Western Avenue, no one else

(Testimony of Hafis Salich.)

being present except Gorin and myself. At that meeting we talked considerably and discussed the Japanese situation at large. I gave him some oral information concerning the so-called Japanese activities, but at this moment I couldn't remember what it was. Either at that meeting or the meeting following that, he gave me some information about the activities of the Russian engineers at the Douglas aircraft, and at that meeting also he gave me \$200 in cash. I thanked him for the assistance and that is about all that was said about the \$200. I may have given him some oral information about the subject we discussed, but also some written notes covering a part of that information which he was interested in, but I don't remember what that information was. I told him orally what I thought the Japanese Colony represented, how many people were there, what the people that lived in the Japanese Colony were engaged in from the standpoint of vacation. I believe I also discussed with him as to whether or not the Japanese in this area were really patriotic for Japan or whether or not they were lukewarm or whether or not they were pro-American. Pertaining to that particular subject, I told him that Southern California had the most number of Japanese people living here; that they were first generation and second generation Japanese. I also told him in my opinion the first Japanese were intensely patriotic to their Emperor. I also told him that I thought the second

(Testimony of Hafis Salich.)

generation of Japanese, however, could be depended on to rally for the American side in case it came to an actual point of contact, I mean conflict. The substance of what Gorin said was that they, in Russia, felt that the Japanese were almost fanatical in their worship of the Emperor and that the masses at large would be willing tools to follow the dictates of the leader, even to the extent of attacking such ostensibly friendly and democratic powers as the United States of America; and he thought that the Japanese that were born here or in Japan were all [419] pro-Japanese and that Americans were laboring under a delusion of the fact that the Japanese could be trusted on second generation or not. In substance, I told him that that was about the type of information that I could furnish, and that is about all. I believe at that meeting, and other meetings, he again repeated his assurances of friendship; also his admiration for my avowed feeling of loyalty to this country. He said that Russians held U. S. A. in great admiration; they were very grateful to us for teaching them things of which they knew very little about, such as advanced methods of technique. He said that they were very grateful for permission granted their aviation engineers to come here and study the aviation methods of engineering—that I remember particularly—and that he also said that if at any time he came into possession of some information concerning Japanese, which I considered would be worth while, that he would

(Testimony of Hafis Salich.)

turn that information over to me. In fact, either about that time or shortly thereafter he did furnish a report concerning a Eurasian, or half-European, half-Oriental girl, who was reported to have been living in Hollywood and associating with Orientals. I remember having worked on that case, and the office followed that case up with Mr. Stanley and myself working on it actively. I typed up the information concerning the engineers at the Douglas Aircraft furnished to me by Gorin and gave it to Lt. Claiborne as one of my usual reports. At the time I remember telling him that this information came from Mr. Gorin. I don't recall what sort of a reply be made. Commander Roachefort was gone by then. It was, I believe, from time to time in that period that I mentioned it to either Mr. Claiborne or Mr. Stanley something about Gorin. At any rate, I remember telling Mr. Claiborne that I knew a Russian connected with the Intourist organization. With reference to the telephone conversations referred to by Mr. Stanley in his testimony, there was a number of such telephone conversations on the telephone. I can't recall exactly as to which—I mean to what [420] each separate specific conversation consisted of—but when Stanley was present there I believe Mr. Gorin did call me up, and I told Stanley that that was Gorin; and Mr. Stanley, on another occasion was also present when I telephone Mr. Gorin myself for the purpose of making an appointment with him and finding out some in-

(Testimony of Hafis Salich.)

formation from him. That information was about the Russian engineers at Douglas Aircraft. I think Stanley was there when Gorin phoned me and made this luncheon appointment at Perino's. I talked to Mr. Stanley following this conversation with Mr. Roachefort concerning which Mr. Stanley testified. I think that we were talking about taking a trip somewhere. Mr. Stanley mentioned his round-the-world trip, but I think I told him that by 1940, when my financial affairs would be pretty well straightened out, I would like to take a trip to Russia. I believe that conversation was also occasioned by the fact that I had just received a letter from my uncle back there. And Stanley did say something about—"Well, your friend will probably fix you up with a reduced rate on the transportation." I would say that I saw Mr. Gorin about four or possibly five times between say the first of June, 1938, and the 10th day of December, 1938. I have a general recollection of all of the occasions together, except one occasion. That was when we were discussing the fact that I was keeping up my payments to my wife. He then suggested that I should make a property settlement, and that he would be glad to furnish me with \$500 which would cover the property settlement and then I wouldn't have to worry much about keeping up the payments. This occurred about a month and a half before the property settlement was effected some time in November. It took place in my car. We were

(Testimony of Hafis Salich.)

riding that evening around the western part of Los Angeles and the southern part of Hollywood. No one else was present. During one of those conversations he also stated that the information that I had given thus far was found to be very inconsequential, no value by his superiors or Moscow, I believe he [421] said; and which time I also told him that that was the only kind and the best kind of information I could furnish him; that I knew at the time the stuff was valueless and that if they themselves thought the information was no good, why, it was perfectly agreeable with me that I should terminate my relationship entirely. By "They", I mean Mr. Gorin and his superiors. At a meeting or two before that, I believe Gorin and I had talked over the apparent value or worthlessness of the report. I believe that conversation took place either in June or July of 1938, in my car while we were riding around and talking. He said that either his superiors or Moscow felt the information was of no value and they believed I was in a position to get information concerning the so-called real known Japanese spies. I believe that was all that was said in that conversation. I told Mr. Gorin then that I was in no position to know as to who the real Japanese spies were; that that information, however, was the best I could give at the time. I remember specifically the meeting and talking to him about relatives in Russia. I told him that I had received a letter from my uncle where

(Testimony of Hafis Salich.)

he stated that he was temporarily out of a job. Gorin's reply was not too specific, to the best of my recollection. I believe he said that even in Russia people change employment rather to suit their ability or fancies, or words to that effect and that this was just probably a temporary situation. Another specific conversation I had with Mr. Gorin which I remember, I believe that after he gave me the \$500 the property settlement terms were also to cover a number of bills which were not covered naturally by the amount, so at that conversation I think he said he would give me an additional \$200 to cover that. This took place some time in the latter part of November, if I recall correctly. It was after the property agreement was executed. He paid me additional money, \$200. I recognize the document, which is Exhibit A, it is a property agreement between myself and Velma I. Salich, my estranged wife. The interlineation [422] which is there was written in at my request and initialed by both Mrs. Salich and myself. At the time it was executed, I gave her \$500. \$250 was borrowed from the California Bank and the remaining \$250 was borrowed money furnished by Gorin. He gave me the \$500 the latter part of October or the first part of November. About a month after that he gave me the last and final \$200. I received from Mr. Gorin, I believe, altogether \$1700. I told him I would pay him back. I told him that some time either in August or September. I told him that I considered

(Testimony of Hafis Salich.)

this merely a temporary loan in my present predicament, and that I intended to repay him every cent of it as soon as my domestic and financial difficulties were straightened out. To the best of my recollection I gave to Gorin information contained in Government's Exhibit No. 6 (dd), which you have shown me. At no time did I give Mr. Gorin any actual file which was contained in the Navy Intelligence files. The so-called reports given him were merely information which I remembered or either reported to Mr. Gorin orally or made note of on my portable typewriter in my apartment at home. To the best of my recollection, I disclosed the contents of Government's Exhibit 6(cc) to Gorin, also I stated the contents of Government's Exhibit 6(bb). I do not remember stating the contents of Government's Exhibit 6(aa), although I have furnished him with information concerning the particular subject individual. When I held a conversation with Mr. Dierst, December 10, and we went over together the files brought up from the San Pedro office, I am not so clear as to what occurred at that particular evening. While Mr. Dierst and I talked, why, we leafed over some of these, and I believe I told him that this would give the type of information I furnished Mr. Gorin, this might have been the type of information furnished Mr. Gorin, in that particular order. And when he did finish that report, and where I made ten written notations, the last two pages of that report, how-

(Testimony of Hafis Salich.)

ever, I did not go over with him. I had a chance to look [423] at those reports at your desk here later on, but I did not go over that page or two where there was a long list of reports where it was stated gave or did not give. I read over the first, second, third, fourth and fifth pages of Government's Exhibit No. 4 after Mr. Dierst wrote it out. With reference to the statement "In going over the various reports of the Naval Intelligence records with Salich, he stated that he furnished information from the following reports to Gorin on their last meeting, which was the day after Thanksgiving last, or November 25, 1938," which is on the sixth page of the exhibit, I would say that as to the list of seven numbers there I did not go over with him any list of this information where the numbers of the reports alone were given. However, on the reports where some specified explanation was given, I did read that and make appropriate correction; the comment in parenthesis opposite the number 1116 is my comment. I simply read the explanation that he put down on the report as given by me to him but paid no attention to the numbered reports which he put on the left margin. On the next page which commences "For Gorin and doing sabotage work", I read over his explanations again but did not check the numbers or the actual report itself. As to the next to the last page of the exhibit I again read the explanations which Dierst wrote. The same is true as to the last page. In the conver-

sation with Mr. Dierst, I picked out every report which I might have furnished, I think we went over that file very carefully. I am unable to say whether we left in the file any reports which I did or might have furnished to Gorin. We went over a lot of reports, looked at a number of files, but whether or not we covered them all, I am unable to say. Of those I looked at all the reports I furnished to Gorin were picked out. I was under a mistaken idea that Mr. Dierst had personal notes which were introduced as an exhibit. It is those personal notes that I had reference to that I did not check over with him or look over at all. [424]

Whereupon it was stipulated that Mr. Dierst used two pages, which photostatic copies were in the hands of Mr. Stone, to refresh his recollection when he testified.

(Witness continues) These photostatic copies consisting of two pages are the pages to which I referred when I said I did not look at those last two pages of Mr. Dierst's notes.

I remember discussing with Gorin a man by the name of Simmons. We discussed him twice. They were a meeting apart from each other. I imagine the first time we discussed that was some time either in August or September, and he mentioned to me that there was a man named Simmons; or Simons, in San Diego, who was taking Japanese lessons from a certain Japanese doctor down there, and that his name, as I mentioned before, was

(Testimony of Hafis Salich.)

either Simmons or Simons, and he also thought that the man might bear investigation from our angle as a possible American suspect because he was studying Japanese, and I think I looked that man's name up in our files. I don't believe there was any more conversation concerning Simmons the first time his name was mentioned. At the next conversation I had with Gorin his name was mentioned again, this took place at a time when I think I made some kind of a written note concerning Simons. I made this from the 5x8 index file which is kept alphabetically according to names in the office in San Pedro. I told Gorin that I looked that name up, but that we can't seem to have any information concerning that man Simons as a possible student of Japanese language from this Japanese doctor, but that the only Simmons there was in our files in San Diego was a Simmons and some other fellow that was in some island down there near San Diego, or in San Diego. If I can remember correctly, now I think that I told him that this information concerning Simmons and his friend came from some private watchman or private patrolman. From time to time I also asked Mr. Gorin about certain names which were reported to us as possible communists, or rather possible suspects in subversive [425] activities, and possible Soviet agents. And this information I would ask him, and he would deny those that he did not know, and those

(Testimony of Hafis Salich.)

that he knew of he would give an appropriate comment, such as a man named Shumovsky, who was in business here that was perfectly legitimate. I believe that conversation about Shumovsky took place some time either in May or April or June, because I remember having furnished that information to the office, but I am not so sure in my mind whether I furnished it to Mr. Claiborne or Mr. Roachefort. I believe I discussed the man mentioned in memorandum No. 1116, dated November 19, 1938. That conversation took place possibly around October or November, 1938. The individual mentioned in that report was considered by our organization as being very unreliable, and I suspected that he may have also contacted Gorin, offering his services, or rather, volunteering his services, for one purpose or another. I am referring to Captain Bakesy. I asked Gorin about him and he said that he knew of him, and he also knew from his knowledge of the man—I think from other people—that he was also very unreliable and that he had nothing in common with him or nothing to do with him. Referring again to the conversation in connection with Simmons and Rayburn, I told Gorin I looked Simmons name up down at the office. that I found no record of Simmons studying Japanese, and the only Simmons of or in the vicinity of San Diego is Simmons and a friend of his, I think it was, who works in North Island in San Diego. I think I also added that this

(Testimony of Hafis Salich.)

information came from some private watchman or private patrolman. I think I gave it to him in writing and I remember that at that time I asked him whether or not he knew the people as communists, and he reassured me that he had nothing in common with the communists here; that no communist considered him as a communist working here and he reiterated his expression of friendship and desire of cooperation with the U. S. A., or words to that effect. I have not seen Government's Exhibit No. 3 before, but this looks very much like one. [426] of the reports that I furnished Gorin. It differs, this is not my style of typing in the first place, and in the second place, this cryptic diagram at the bottom is entirely strange to me. I know nothing whatsoever of these curves and lines drawn at the bottom of this page. The typewritten part of the report, in its phraseology and English employed thereon, looks very similar to my style of typing as well as language used in writing reports. I think that I could go as far as to say that this is one of the reports that I furnished Mr. Gorin in a written form. When I furnished it to him, there was no diagram or ink or pencil writing on it such as we see here at the bottom of Government's Exhibit No. 3. I did not give Gorin any information concerning George Ohashi, Paul Nakadate, George Suzuki, Dr. M. M. Nakadate, Y. Nakadate and Bert Simmons. I gave him what is in substance

(Testimony of Hafis Salich.)

contained in Government's Exhibit No. 3 with the exception of the ink addition at the bottom. The last time I gave any information to Gorin was the latter part of November, 1938, I believe.

Whereupon there was offered in evidence Report No. 1116. Defendant Gorin objected on the ground that nothing contained in it related to or was concerned with the National Defense and that it was incompetent, irrelevant and immaterial, and upon the ten grounds offered in support of his objection to the first of the reports which were offered in evidence by the Government.

Objection overruled. Exception allowed. The document referred to was received in evidence and marked

"DEFENDANT SALICH'S EXHIBIT B,"

and is in words and figures as follows:

18 November, 1938

Memo for D. I. O.

Subject: Bakesy, Captain Charles G.—Interview with the U. S. Secret Service Office in Los Angeles.

1. The subject, individual was met on the appointed day and it developed that he wanted to see the proper government authority regarding the prosecution of one Leon Lewis, whom Bakesy accused of impersonating an

(Testimony of Hafis Salich.)

"Army Major" and obtaining from him some of his subversive evidence. It seems that Leon Lewis was introduced to Bakesy once as "Major Frank Montgomery" and later, when Bakesy called on Leon Lewis on some other matter, he recognized him as "Major Montgomery."

2. Bakesy was referred to the United States Attorney's office.

H. DeB. CLAIBORNE.

(Witness continues) To the best of my knowledge, I gave Gorin Naval Intelligence Report No. 1145 concerning Count Koyoshi Kuroda, who was at that time staying at the Ambassador Hotel. To the best of my belief, I also furnished him report No. 1133, subject, the Japanese War Saving Fund, and the amount contributed to in the Los Angeles area. To the best of my memory, I also furnished Mr. Gorin report No. 1132, concerning reported invention of Futashi Cato. To the best of my memory at this time, I also furnished him report No. 1130, concerning Shijgeki Oka.

Some time during the summer of 1938 I received a letter from an uncle of mine in Russia stating that he was out of a job and I mentioned that fact to Mr. Stanley. Just he and I were present. I told him I intended to send my uncle one of my suits. I said I would like to go back there and visit him

(Testimony of Hafis Salich.)

and the rest of my relatives. I don't recall that Gorin's name was mentioned in that conversation. I am a United States citizen, and acquired my citizenship in March of 1929, at San Francisco, California. That was before I became a member of the Berkeley Police Department, and I have remained a citizen at all times since. When I gave this information to Gorin I did not believe that it would be of injury to the United States. I did not believe that it might possibly be of any injury to the [428] United States. I did not believe that that information would be of advantage to the Union of Soviet Socialist Republics in any conflict with the United States. On December 11 I gave a typewritten statement to Mr. Dierst. That statement is the whole truth. You have handed that to me and I have read the whole of that statement and it is the whole truth, and after thinking the statement over there are no radical changes of any kind that I would want to make.

Cross Examination

By Mr. Harrison:

With reference the typewritten statement I made December 11, 1938, there are one or two points there I could clarify by further explanation or an explanatory remark. Any impression that may have been derived from reading this that I had at any time at all a conscious knowledge of the fact that

(Testimony of Hafis Salich.)

information I furnished Mr. Gorin was of any possible benefit to Russia. I believe my statement here is clear enough to indicate that at no time did I think that Russia was benefiting anything by the information that I gave them, for if there was any benefit of any kind, it was a benefit for the advantage of the U. S. A. That is about the only thing I think of at the moment. I received \$1700 from Gorin in currency. As near as I can remember now, most of it was in \$50 denominations. According to Mr. Dierst, I told him that that money that was found in my possession was given to me by Mr. Gorin. After thinking the incident over, however, I believe that part of that money was salary, and part of it was money that was given to me by Mr. Gorin, because I believe that he gave me that money at least two or three weeks before the interview took place to which Mr. Dierst referred to. I received some money to make the property settlement with my wife about November 8th, and about November 22nd I turned over certain papers for the \$250. The first money I received from Gorin was given me some time either in March or April, or May, it was in the Spring of 1938. That is the first that I can tell you. I do not [429] remember the occasion when he gave me the first money; there is no specific occasion in my mind; because there was nothing outstanding about that particular meeting which would bring the occasion to my mind. I said

(Testimony of Hafis Salich.)

there was nothing outstanding in my mind in connection with any other event that took place in that meeting except that money. I was in a car at the time driving around. The amount was \$200, and to the best of my recollection, it was in \$50 bills. The other sums of money were given or loaned to me, I should say, by Mr. Gorin at the interval of about a month and a half or two months, or two and one-half months apart. I would say it was about two months after that I received the second \$200, and the third time I got the money was about a month and a half or two months after that. All I can remember at this moment is that from the period of time from say March of 1938 and December 10, 1938, including the last \$700 which were used for the property settlement, Gorin gave me \$1700 altogether. I didn't say that he gave me three payments. I can remember my own statement now. Altogether he gave me \$1700, \$700 of which was used in the property settlement with Mrs. Salich. Before this \$700 there may have been five other individual occasions during which he gave me \$200 at a time. Those five individual payments were a couple of months or a month and a half apart. The occasion when he gave me the first money, what occurred was this: I had a rather large gasoline bill to meet about that time, so most of that money went to that. I believe that was some time, either the first part of March, or I believe so because

(Testimony of Hafis Salich.)

the bill was received by me some time in February. That was not the occasion on which Mr. Gorin and I came to an agreement to the effect that I would furnish him with certain information from the files of the Naval Intelligence Office. To the best of my recollection, I believe we had come to such agreement before I received the first money. A matter of possibly two weeks elapsed between the time that I made this agreement and the time I received the \$200, but it is merely guesswork on my [430] part, however. To the best of my recollection, I received the first \$200 in March. Between the time that I and Gorin came to the agreement relative to the furnishing of this information and the time he paid me the first \$200, I furnished him that information concerning the Far East Research Institute meeting at which a certain British captain was present and certain anti-Semitic and anti-American utterances were made. That is the only information I furnished him before I received the \$200. At some later meeting, I received \$200. The second time I furnished him information of the type I pointed out earlier in my testimony; I probably received another \$200 in the middle of April or the first part of May. Up to that time I had furnished him information of the type I identified here earlier in my testimony. That is the only information I furnished him. For the entire thing, through the entire relationship with Mr. Gorin, I received \$1700,

(Testimony of Hafis Salich.)

which I stated before I considered more or less of a loan. To the best of my recollection I don't think I gave him a receipt for the money. I did not give him any note for it. I gave him no written note of any kind. However, I was accustomed with people on oral statements, as I made my agreement with my wife orally, borrowed money elsewhere on my oral promise to repay. The bank required a note when I borrowed the \$250 from it. Gorin didn't require anything from me as evidence of my obligation to him. During the period of time he made five payments of \$200 each approximately a month and a half apart. Gorin told me—if I may qualify myself, your Honor—through some peculiarity of Russian idioms, I don't remember whether he said Moscow or whether I understood him to say Moscow or whether he said superior officers; he did say that somebody higher above was dissatisfied with the type of reports that I was furnishing him. He did not say who that was at any time. That was shortly after our second or third meeting took place, to the best of my belief. That may have [431] been some time in June or in July or August, even. I did not receive money from Gorin every time that I contacted him after our agreement early in March of 1938. I saw him at the time when I did not receive any money from him. Up to the 10th of December, I had received from him money at about seven different times. During the period

(Testimony of Hafis Salich.)

I would say I saw him ten to fifteen times; I would say closer to fifteen times. I did not give him information each time I saw him. When we came to an understanding, no definite understanding as to the amount that he was to pay me, was arrived at. At the first time that I received money, I did not know in advance how much I was going to receive. I didn't ask for any specific amount but told Gorin of my distressed financial condition. As nearly as I can recall now, it came from our conversation concerning my wife where I believe he stated that she was at his house and had acted somewhat unpleasantly. To the best of my recollection I think that was the occasion when I told him that I was having difficulties in my domestic life as well as my financial status. When I received the second payment of \$200, I had no positive knowledge of the fact I was to receive the other \$200, because at no time before the specific amount of \$500 was mentioned was there mentioned any amount which I was to receive. I did keep track of the money, however, mentally, how much I received from Mr. Gorin. In July or August I had some discussion with him relative to the fact that this material or information wasn't what his superiors expected, and then, I continued to furnish him with the same type of information. When he told me that the information was of gossip character, was of no value, I told him that that

(Testimony of Hafis Salich.)

was the best I could furnish, and I also told him that I was in no condition to furnish any better type of information than that and perhaps, under these conditions, my furnishing him with any further information should be terminated. He then replied that I need not feel that way about it; that some of this inconsequential information somewhere, somehow, might fit [432] in some picture, certain picture, and that he, therefore, preferred that I should keep on doing what I was doing. Then I received the \$500 to make the property settlement with my wife in early November, and I am not very certain as to the date or when I received an additional \$200; but the additional \$200 was received about the dates mentioned, or possibly two or three weeks before the time of my first contact and detention by Mr. Dierst's organization. My financial distress was occasioned by the fact that I was having to pay my wife approximately \$125 a month. When I made the settlement early in November that terminated my responsibility for the cash payment. For the cash payment it did. However, there were other provisions in the property settlement whereby I was to pay for accumulated furniture storage bill which was a matter of over \$93. I was to pay for two or three department store bills. One bill, particularly, was for over \$40. I was also to pay the attorney fee in connection with executing this instrument. I don't know just

(Testimony of Hafis Salich.)

without looking at the property settlement whether or not there were any other provisions which called for additional money on my part. The \$250 borrowed from the bank at Terminal Island was to take care of some personal bills of my own. The last \$200 was to be the last payment that I was to receive from Gorin, according to my own belief and to my own knowledge.

After I reported for duty to work for the Naval Intelligence, I knew that I was to conceal my identity. I don't believe I knew it before. It does not stand out in my mind at all at the time that I was to conceal my identity entirely. During my employment I carried a police badge and represented myself as being connected with the Los Angeles Police Department. I used it where it was necessary to show that I had some authority as a police officer. I did not make application for a position with the Naval Intelligence directly. I made it through the Undersheriff of San Diego County, Mr. George Brereton, whom I knew personally and with whom I had friendly relations. I recognize the letter you show me, dated August 10, upon receipt of which I proceeded to San Diego. It was received by me from Mr. George A. Brereton of San Diego. [433]

There was then offered in evidence as against the defendant Salich alone and not as against the defendants Gori, said letter, to the introduction of

(Testimony of Hafis Salich.)

which defendant Salich objected upon the ground that it was immaterial and did not tend to prove or disprove any issue in the case

Objection overruled. Exception allowed.

The letter was received as

GOVERNMENT'S EXHIBIT NO. 8,

and is in words and figures as follows:

August 10, 1936

Mr. Hafis Salich
Berkeley Police Department
Berkeley, California

Dear Salich:

I talked with Commander H. C. Davis, Intelligence Officer, Headquarters, 11th Naval District, this morning (he had been away for a few days) and he accepted my recommendation of you for the position which he has in the Los Angeles area. The salary will be \$250 per month and \$1000 per year expenses. You may have the job just as soon as you can report to him for work—the sooner the better.

I am writing a letter to Chief Greening and am enclosing a copy for your information. Please do not tell anyone in Berkeley excepting the Chief and the City Manager as any information that might connect your leave of absence with me or the Government would probably destroy your usefulness.

(Testimony of Hafis Salich.)

I suggest that you make arrangements as soon as possible to see Commander Davis at the 11th Naval District Headquarters, [434] third floor, as soon as convenient. I am leaving on vacation for two weeks this coming Friday, so if I am not here, go to him directly. You can usually see him any morning, and most afternoons excepting Saturday or Sunday.

With best of luck, I am, sincerely,

GEORGE A. BRERETON.

(Witness continues) I worked as a clerk for about a month in the Naval Intelligence Office at San Pedro. I also write shorthand. During that period I had access to everything in that office in the daytime; although at night time—that is, the closing hour of the office—the safe was locked up by the officer in charge. These reports that we referred to heretofore in the testimony of myself and other witnesses was usually kept in the upper right-hand drawer of the desk of the Chief Yeoman. About three times a week I would review the new reports so that I would know the nature of the cases that the Naval Intelligence were investigating. I also knew that there was a file covering the various reports that was retained in the safe and which reports were evaluated and indexed under the names. The information which I furnished Mr.

(Testimony of Hafis Salich.)

Gorin was partially oral and partially written. The written reports that I gave, I wrote those up in my apartment entirely from memory. I would not make memoranda in shorthand and then from those shorthand notes write up the reports. I would like to qualify that. I do remember having made shorthand notes on a man named Shumovsky, who was carried in our files as a possible suspect of some nature or other. It was my intention to inquire of Mr. Gorin as to what he knew concerning Mr. Shumovsky, and I wanted to have all the data possible in my hands at the time that I asked him these questions. That is the only occasion that I can remember of having made any shorthand notes of any kind pertaining to the reports contained in our files. I did not give him information on reports of virtually all the Japanese [435] investigations. I gave him a large number of reports pertaining to Japanese activities. I would not say I gave him hundreds of reports on Japanese. If I said tens of reports on Japanese activities, it would be more correct.

Gorin gave me that letter of introduction about January 8th. However, I had met him several months before. At the time he produced the letter of introduction, he proposed to me the furnishing of certain information. I either declined it outright, or I told him that I would think the matter over. Then the following day I told the incident

(Testimony of Hafis Salich.)

to Lt. Commander Roachefort. I remember having told Mr. Roachefort about that, and I think he told me to determine further as to just what Gorin wanted, what he was interested in. At one of these meetings at the office he did say that I should take Stanley with me. At the time I talked to Lt. Commander Roachefort relative to the proposition of Mr. Gorin, I informed him that Gorin had offered financial assistance. I did not tell him what financial assistance. There is a confusion in my mind as to sequence and continuity of these meetings that took place between Mr. Gorin and myself, as well as my reports to Commander Roachefort as to my contacts with Gorin. In substance and collectively, I have already testified yesterday as to what occurred and what I had reported to Lt. Commander Roachefort. Following this conversation with Lt. Commander Roachefort, I again contacted Gorin and I was alone when I contacted him. I don't remember now if Lt. Commander Roachefort made that statement concerning Stanley at that other meeting. I remember that Commander Roachefort told me to see Gorin and ascertain his proposition and to take Stanley along. After that conversation I again contacted Gorin and Stanley was not with me. I don't remember now if I reported that to Commander Roachefort or not. To the best of my recollection now, I don't think I did. However, I reported to Lt. Claiborne at the time I gave him

(Testimony of Hafis Salich.)

information about some engineers, that that information [436] came from Gorin. I did not advise Commander Roachefort that I had received \$200 from Gorin and did not tell my superior officers that I was giving this information to him. I communicated information which I received from Gorin to the office; all the information that I thought was worth while. To the best of my memory, Gorin told me that on one occasion he had an American employed. With reference to the information which is noted in Mr. Diert's statement, Government's Exhibit No. 4, to the effect, "Gorin told Salich on one occasion that he had an American employed but had fired him because he was unreliable; and he also said that a similar check was being made on Japanese activities in San Francisco, and Salich saw part of a typewritten report about Ted Yasunaga or Yasukawa, and something about the subject being a graduate of Galileo High School," I made a report on that. I don't remember if I made it in a written form. I reported that particular item to Lt. Commander Roachefort, and I believe Mr. Stanley was within the hearing or I had discussed that particular item with Mr. Stanley. I remember having discussed it with Stanley for sure, and I remember having reported to Lt. Commander Roachefort the subject matter of Ted—and the name mentioned there. I believe at this time that I told Lt. Commander Roachefort that

(Testimony of Hafis Salich.)

Gorin was having a check made in San Francisco of Japanese activities, but my belief is positive that I discussed that item with Mr. Stanley. I made my reports to the commanding officer in charge of the office. To the best of my belief, I reported that Gorin had told me that he would see that I got a trip to Russia, and that the Russian government as a part of their propaganda program paid for trips to Russia of members of certain organizations, and that it could be arranged for me to make one of these trips. It was not in writing, orally. Sometimes I made my reports in writing, sometimes orally. Sometimes from oral reports either Roachefort or Claiborne would make handwritten notes which they would then dictate to the secretary. I did not [437] advise Commander Roachefort or Lt. Commander Claiborne that Moscow was dissatisfied with the information that I was furnishing. To the best of my belief I did not call my superior officers' attention to the fact that Gorin said he knew Captain Bakesy, and that he had come to Gorin's San Francisco office, nor did I report to Lt. Claiborne that Gorin had mentioned a Simons in San Diego who was supposed to be studying Japanese. I remember having made a statement to Lt. Commander Roachefort at one time to the effect that I was informed Russians had no known agents working against this country, or agents working against this country. I don't even remember at this moment if I mentioned the names of Hillman and

(Testimony of Hafis Salich.)

Kovac to Gorin, but if I did or if Gorin gave me any such information, that information was not turned over to the office. With reference to report No. 1066, I have no recollection at this time of ever having approached Gorin with this piece of information in any connection. I have no recollection of having discussed with Gorin and having asked him any questions about Hillman and Kovac. At different times I discussed with him various Communists that were under investigation. I have checked with him on various names that I thought he might be able to help me on. I asked him concerning some names, not necessarily indicating that they were under my investigation by the Naval Intelligence Office. When Gorin approached me on the matter of furnishing information, I told him that I had no opportunity of making independent investigation and that I would have to rely upon our Naval Intelligence reports. I discussed Shumovsky with Gorin. I had no specific recollection as to what he said. The information as given to me by Mr. Gorin concerning Shumovsky is contained in the files at San Pedro. He did say that Shumovsky was a student at Massachusetts Institute of Technology; that he was a very brilliant student; that he received, as a result of his ability and industry, an American scholarship or some sort or another and that the man was a technician rather than anything else. [438] I reported

(Testimony of Hafis Salich.)

that item of information concerning Shumovsky down at the office; I reported what he told me, the information I obtained in line with other items of information which were obtained in similar cases elsewhere. I mentioned the name of Gorin to Lt. Commander Claiborne and can remember at least one occasion when I mentioned his name specifically to him. I remember when Lt. Claiborne took over the office at San Pedro. I do not recall him going through a list of names with me when he first took over the office, during the month of June, 1938. I recall no specific occasion when Lt. Claiborne asked me concerning Gorin. I believe, though, there was a conversation at least once concerning Gorin and myself with Mr. Claiborne. That conversation, the one specific conversation which I am sure of, took place after I obtained the information concerning the Russian engineers. I made a practice of divulging the source of information; sometimes I did not. I was personally in favor of divulging it, although my colleague at the time thought that such source of information should not necessarily be turned over to the Commanding Officer. There was no general practice, in so far as that is concerned. The source of information was given either in written form or orally, or sometimes, to the best of my recollection, it was not.

(Testimony of Hafis Salich.)

My expression "in our cards," as listed in Government's Exhibit No. 3, meant the 5x8 index names file which was maintained in our office, which was available to me. It was maintained in the safe, but the safe was open in the daytime and the information and that particular file was available to me. I consider the information I gave Gorin harmless, innocuous and valueless.

Whereupon there was offered and received in evidence and read to the jury that document therefore marked Defendant Salich's Exhibit A for Identification, and which was marked Defendant Salich's Exhibit A. Said exhibit is a writing, a property settlement agreement [439] between the defendant, Hafis Salich, and his wife, Velma I. Salich, purporting to settle and determine the property rights of the parties and providing for the payment by defendant Salich of certain sums of money.

Redirect Examination

By Mr. Stone:

I believe it was Mrs. Salich that suggested that the property settlement agreement be executed. This was some time either in September or the early part of October. We went to see the attorney about a week before, four or five days before the actual execution of that paper.

I saw Aliavdin altogether about three times in San Francisco. At one of those meetings I made

(Testimony of Hafis Salich.)

a reference to the Naval Intelligence Service. Only Mr. Aliavdin and myself were present at the time. We were discussing opportunities for advancement in the police department; whereupon I mentioned that I had made an application for service with the Naval Intelligence in Southern California. The date of that was, I believe, some time in late spring of 1936. After I came down to Los Angeles in August of 1936, I thereafter saw Mr. Aliavdin. I may have seen him about six or ten times. I don't remember the exact number of times I saw him while he was here in Los Angeles. The first time he saw me he called at my apartment, 545 South Hobart, one Tuesday morning, I believe.

Q. Did you at any time discuss with Mr. Aliavdin your work with the Naval Intelligence Service or the fact that you were connected with it?

To which question the Government objected on the ground that it was hearsay and did not tend to prove any of the issues in the case.

Objection sustained. Exception allowed. [440]

(Witness continues) When I left Russia I had a number of relatives left there. Some of them are still living there now. I discussed these relatives with Gorin. On one occasion that I can remember of took place some time either late summer 1938 or early fall of 1938. I told him I received a letter from my uncle, wherein he stated that he was out of his employment. Concerning my relatives, I be-

(Testimony of Hafis Salich.)

lieve Gorin told me that either his friends or his associates or his superiors had investigated my parents and relatives while in Russia and found that their government had nothing against them, or a statement to that effect. I talked with Gorin concerning Shumovsky, who told me who the man was. There was a file on Shumovsky in our records at the office. I don't recall exactly whether that information was requested by my superior officers or not; but at any rate, having read about Shumovsky in our files, I was curious in connection with my duties as investigator for the organization, whether or not any additional information could be obtained from someone that knew Shumovsky. I presented that information in the form of a report to my superior officers in writing. I don't remember whether the written report mentioned Gorin's name or not. I may have accompanied this written report with oral comments to my commanding officer, who, at that time, was Lt. Commander Roachefort. I never told Lt. Commander Claiborne or Commander Roachefort that I was receiving money from Gorin.

Cross Examination

By Mr. Pacht:

Now that you mention it, I recall that Gorin told me that Shumovsky was representing the Department of Heavy Industries of Russia in the

(Testimony of Hafis Salich.)

purchase of millions of dollars worth of machinery in this country. To the best of my memory I recorded that information in my report, and did indicate to the office that information concerning him came from Gorin. I did not obtain information from other sources about Shumovsky other than Gorin. I met Aliavdin through Mr. Griffin, a member of the Berkeley Police Department. [441] I remember his statement that he met Aliavdin through Mr. Troyanovsky whom he contacted in some form of official capacity. Gorin never asked me to give him any information other than information touching the activities of Japanese espionage agents. I believe there was a topic of conversation between Mr. Gorin and myself concerning some form of activity similar to guerilla warfare which might be conducted on Russian territory in case there was an actual armed conflict between the powers mentioned, namely, Japan and U. S. S. R. I don't believe there was a specific mention made by Mr. Gorin that he was interested specifically concerning the Japanese espionage agents in Russia. To the best of my recollection now he was interested in Japanese activities generally in Southern California, and to my inquiry as to what possible connection the activities of local Japanese would have with suspected espionage by Japanese in Russia, I believe he mentioned that he believed the Japanese service—that is, the espionage service

(Testimony of Hafis Salich.)

—had worldwide ramifications and that what they did in any other part of the world might directly or indirectly have a bearing as to what the Japanese did in their own country, namely, U. S. S. R. He told me that if he came into possession of any information of Japanese espionage activities in this country which would be of benefit or interest to the United States he would turn this information over to me for the use of the Naval Intelligence. From time to time I discussed with him activities of so-called Japanese espionage agents, although I hesitate to use that word. Gorin and I did discuss a number of Japanese and the names of Japanese that lived in Southern California. In point of fact, I don't know of my own knowledge whether any of these Japanese people whose names are mentioned in these reports were or were not espionage agents. I never abstracted from the records, files, or safes of the office of the Naval Intelligence, a record of my own self or any information which was contained in the office of the Naval Intelligence concerning myself. Before I received [442] the letter from the Deputy Sheriff in San Diego, I told several people in San Francisco, and not only Mr. Aliavdin, that I was about to make the connection with the office of Naval Intelligence. Some of these other people were Americans, and my parents, who were Russian.

(Testimony of Hafis Salich.)

I heard the testimony about a call which Stanley and I made at 451 South Ardmore upon the occasion of the visit here of the Russian flyers in July of 1937. I did not go to visit or see Gorin on that occasion. I did not even know Gorin was supposed to live there. I did not tell Stanley that we were going to see Gorin for the purpose of seeing the Russian flyers. I said we were going up there simply to try and see the Russian flyers.

Recross Examination

By Mr. Harrison:

I expected Mr. Yudin to be occupying these premises known as 451 South Ardmore. Thereafter, when I had occasion to call at the house to see Mr. Yudin or whomever I would be able to contact and learn something about a Mr. Kaganovich, I found Mr. Gorin.

Recross Examination

By Mr. Pacht.

That was some time in the summer of 1937—I know it was after the arrival of the Russian flyers. I imagine it was around August, either August or September of 1937. I testified on direct examination that Mr. Gorin came to my house on West Fourth Street in the late fall of 1937. I called at 451 South Ardmore some time after the incident of Yudin's took place to obtain information about a Mr.

(Testimony of Hafis Salich.)

Kaganovich. When we went to 451 South Ardmore in connection with the Russian flyers in an attempt to see them, I did not tell Mr. Stanley I was going to see Gorin. I reported the information that I got regarding Kaganovich to my superiors. [443]

Whereupon, by stipulation of counsel testimony of August Vollmer, a witness for the defendant Salich, theretofore taken on the stand in the absence of the jury with the understanding that it would be later read and considered as the testimony of Mr. Vollmer, was read to the jury. His testimony follows:

AUGUST VOLLMER,

called as a witness on behalf of the defendant Salich, being sworn, testified as follows:

Direct Examination

By Mr. Stone:

I reside at 923 Euclid, Berkeley, California. I am retired. On July 1, 1930, I had a dual position: I was Professor of Police Administration at the University of Chicago and also Chief of Police of Berkeley, California. At that particular moment I was acting as Chief of Police in Berkeley, where I served in that capacity from April, 1905, to July 1, 1932. I served as Chief of Police in this city for a

(Testimony of August Vollmer.)

year, 1923-'24, and have had considerable experience in police work and experience in dealing with men in police work. On July 1, 1930, Hafis Salich became a patrolman in the Berkeley Police Department. Prior to that time he had filed an application for that position. After that time he served with the Berkeley Police Department approximately four years. Part of the time he served in the capacity of secretary to me; patrolman part of the time, and acting sergeant part of the time. During that period his general reputation for truth and integrity and veracity in Berkeley and in the Berkeley Police Department was excellent. His general reputation was never questioned by anyone outside of the Berkeley Police Department in Berkeley; all that I heard about him was good. His reputation in Berkeley today is excellent.

Whereupon there was offered in evidence by the defendants Gorin and Salich the article respecting the peril of Japan, beginning [444] on page 40 of Volume 1, No. 1, Ken magazine, April 7, 1938, to which offer the Government objected upon the ground that it was incompetent, irrelevant and immaterial and did not tend to establish any of the issues in the case.

Objection sustained, Exception allowed.

Whereupon it was stipulated between counsel for the parties that if Mr. Fred Howard was sworn and testified, he would testify substantially to this

(Testimony of August Vollmer.)

effect: that he is the owner of a property at 10723 Ohio Avenue, Westwood, this city; that Mr. and Mrs. Gorin and their child lived in that house, which is a triplex apartment house, from March 22, 1937, to September 22, 1937; and that they had a six months' lease and lived there during all of that time.

Whereupon the defendant Salich rested his case, and the defendants Gorin rested their case, except as certain motions to strike theretofore presented to the court and except also for a motion for a directed verdict:

HENRI DeB. CLAIBORNE,

recalled as a witness on behalf of the Government, in rebuttal, having been previously sworn, testified as follows:

Direct Examination

By Mr. Harrison:

During the time that I was in charge of the Naval Intelligence Office at San Pedro, I remember mentioning the name "Gorin," and I remember Salich mentioning the name of "Gorin" to me. I first officially took over the office the first of June, 1938. At that time I asked in a general way who Gorin was; and I was answered in a general way as I recall, that he, Salich, was acquainted with Gorin, who was manager of the Intourist Bureau

(Testimony of Henri DeB. Claiborne.)

here, that was in a travel business and took care of people who wanted to go to Russia. I can recall no other instance in which Gorin was discussed in the office or outside with Salich. To the best of my knowledge, Salich never filed a report with me that mentioned the name of Gorin. [445]

Cross Examination

By Mr. Stone:

I read the file on Gorin in the office of the United States Naval Intelligence Service. The file itself was not discussed. The name was mentioned in June, just after I took over the office. In the file that was kept on Salich in the office, Gorin's name was mentioned. I never discussed the contents of that file with Salich.

Whereupon the Government rested its case.

Whereupon the defendants Gorin made a motion for a directed verdict as to each one of the counts of the indictment upon the grounds assigned, and given, and stated to the Court in the motion for directed verdict made at the close of the Government's case. Motion denied. Exception allowed.

Whereupon the defendant Salich made a motion for a directed verdict as to each one of the counts of the indictment upon the grounds assigned and given and stated to the Court in the motion for

directed verdict made at the close of the Government's case. Motion denied. Exception allowed.

Whereupon the cause was argued to the jury, Mr. Neukom making an opening argument on behalf of the Government, Mr. Pacht arguing on behalf of the defendants Gorin, Mr. Stone arguing on behalf of the defendant Salich, and Mr. Harrison making the closing argument for the Government.

[416]

At the close of the Government's case and before the motion for a directed verdict was made by the defendants, defendant Mikhail Gorin made a motion to strike certain portions of the testimony which had been admitted theretofore over his objection with leave granted to thereafter move to strike the same, and by stipulation of the parties ruling upon said motion was deferred by the Court, it being agreed that such ruling be deemed to have been made and ruled upon prior to the ruling upon the motion by defendant Gorin for a directed verdict at the close of the Government's case. After both parties had rested, the Court ruled upon said motion to strike and granted it in part and denied it in part, and in so far as it was granted instructed and stated to the jury as follows:

Gentlemen of the jury, you are now instructed to disregard, as to the Defendant Mikhail Nicholas Gorin, the following testimony, which was received subject to a motion to strike.

This, I might explain to you, was during the testimony of Mr. Hanna, I believe:

"Q. Will you recall the substance of the conversation as you heard it, and in doing so refer to, explain to the jury who was doing the talking. The question was by Mr. Neukom, and referred to a conversation held between Mr. Salich, Commander Rochefort, and Mr. Stanley in the new Postoffice Building in the middle of March, approximately, 1938.

"The Witness: Salich told Commander Rochefort that he had contacted Mr. Gorin and that Mr. Gorin had offered him certain moneys. He asked Commander Rochefort whether or not he should continue to contact Mr. Gorin. Commander Rochefort told Salich not to contact Gorin more and that if he did, he would have Stanley with him.

"Mr. Neukom: He would what? [447]

"A. He would have Stanley with him."

That conversation, gentlemen of the jury, is not binding upon the Defendant Gorin and should be excluded from your consideration.

Question by Mr. Neukom (and this you are instructed also to disregard as to the Defendant Mikhail Nicholas Gorin):

"Q. Now, do you recall approximately what date this was? (Referring to a conversation.)

"A. I would say it was either September or October. I couldn't give you the date.

"Q. Of 1937?

"A. 1937.

"Q. Was anyone else present in the room where this safe was besides Mr. Salich?"

I said "conversation." It was an occurrence in the room in the Postoffice Building.

"A. I was there with Mr. Salich.

"Q. And did you leave the room for any length of time?

"A. I would say about four or five minutes.

"Q. And when you returned, was anyone else present in the room besides Mr. Salich?

"A. No one.

"Q. And did you——"

Then there were objections and remarks by the Court. The answer was repeated: "No one." And the question: "Did you——"
Question by Mr. Neukom:

"Did you observe who was in the room when you returned?"

"A. Yes, Salich was there.

"Q. Nobody else? [448]

"A. Nobody else.

"Q. Did you observe the condition of the safe, the small safe, when you returned?

"A. The door was opened much wider.

"Q. Did you have any conversation with Mr. Salich with respect to that situation?

"A. I did not mention it to him."

That occurrence, gentlemen, you are to disregard in connection with the guilt or innocence of the Defendant Mikhail Nicholas Gorin.

You are instructed to likewise disregard the following conversation or occurrence as to the Defendant Mikhail Gorin. This is during the testimony of Mr. Stanley.

"Q. Just relate the substance of the conversation at that time."

The conversation alluded to was in May or June, 1937, between Mr. Salich and Mr. Stanley.

"The Witness: He told me he had a Russian friend named Gorin who may be a good informant for us."

Question by Mr. Harrison:

"Was that the substance of the conversation at that time?"

"A. Yes, sir."

Following very shortly after the conversation previously alluded to, referring to another conversation in July of 1937, the same parties present, Salich and Stanley:

"Q. Give us that conversation."

"A. He asked me, would I like to see the Russian flyers."

"Q. Is that all that was said?"

[449]

"A. I told him I would."

"Q. What else was said?"

"A. He said, 'We will drive over to Gorin's house. They are over there.'"

That you are instructed to disregard in connection with the guilt or innocence of the Defendant Mikhail Gorin.

You are likewise to disregard the following conversation between the same parties, occurring shortly thereafter in the testimony (the same parties were present on this):

"Q. Will you give us the substance of this conversation, Mr. Stanley? (Question by Mr. Harrison)

"A. May I have that question?

"(The record referred to was read by the reporter, as follows:

"Q. And you fix that date as when?

"A. It is either the last week in December of '37 or the first of January '38.

"Q. Will you give us the substance of that conversation?

"The Witness: Salich asked me to ride out to Gorin's home with him."

Question by Mr. Harrison:

"Is that all that was said?

"A. He may have given me the reason at the time, but I don't recall it."

You are instructed to disregard that conversation in connection with the guilt or innocence of the Defendant Gorin. [450]

This is a conversation between Salich and Stanley and referred to a certain dinner, alleged dinner, at Perino's on Wilshire Boulevard.

This remark by Stanley you are directed to disregard and not consider it in connection with the guilt or innocence of the Defendant Mikhail Gorin.

"A. And I told him I didn't like it on account of the confidential nature of our business. I thought it was dynamite to play with it and I advised him to tell Mr. Rochefort, who was then our commanding officer."

"Q. What, if anything, did Mr. Salich reply to that?"

"A. There wasn't much said on it from then on down to San Pedro."

That you are directed to disregard.

The following part the jury are instructed to disregard, in arriving at the guilt or innocence of the Defendant Gorin. This is a conversation between the same parties, occurring some time in March, apparently, of 1938:

"A. To the best of my knowledge at this time, I told him," said Stanley, "at that time, 'if you don't tell the boss about this, I am going to tell him.'"

"Q. What did Mr. Salich answer to that?"

"A. He sort of quieted down about it. I don't think he said much about it."

"Q. Did he say anything further, do you recall?"

"A. No, I don't believe so. We drove on down to the office at San Pedro."

You are instructed to disregard that. Referring again to a conversation between Stanley and Salich occurring some [451] time in March apparently:

"Q. Now, will you give us the substance of the conversation and discussion that you people had in the Naval Intelligence Office in San Pedro where all four of you were present, as you have indicated?"

"The Witness: Mr. Rochefort was sitting at his desk in the room and Mr. Salich and myself were standing opposite his desk and Mr. Salich told Mr. Rochefort that he had been approached by Mr. Gorin with a proposition to turn over certain information to Mr. Gorin."

"Q. And what was said by either you or Mr. Rochefort in the presence of Mr. Salich?"

"A. I had nothing to say. Mr. Rochefort told Mr. Salich that he didn't want him to contact Mr. Gorin again unless I was with him."

That conversation you are particularly instructed to disregard, that portion of it.

You are instructed to disregard the following statement by Mr. Stanley in a conversation with Mr. Salich, which occurred evidently in March, 1938:

"A. He wanted my opinion," said Mr. Stanley on the witness stand, "and I told him I

thought it was on account of the confidential nature of our work that he was playing with dynamite."

That you are directed to disregard.

This, gentlemen, refers to two paragraphs, I believe the last two paragraphs of Government's Exhibit No. 3,—what is the number, gentlemen?

Mr. Neukom: That is correct.

The Court: "Q. Upon your examination I would ask you if any part of this document pertains to any investigation conducted by you.

"The Witness: It does."

[452]

"By Mr. Harrison:

"Q. What part, if any?

"A. The last two paragraphs.

"Q. Did anybody assist you in making that investigation?

"A. No, sir. I was alone."

Gentlemen, you are instructed to disregard that part of the testimony in arriving at the guilt or innocence of the Defendant Mikhail Gorin.

You are instructed, gentlemen of the jury, to disregard the following in connection with the guilt or innocence of the Defendant Gorin and/or the Defendant Natasha Gorin from the testimony of the witness Roy Hanna:

"Q. Being an enlisted man in the United States Navy during the time that you were engaged in your duties, are you permitted to

make suggestions, or give orders to your superior in command?"

That will be stricken, and you are directed to ignore it.

The second sub-division of the same motion, referring, gentlemen, to the same subject matter:

"The Witness: May I have the question, please?"

"Mr. Neuköm: Read the question.

"(The record referred to was read by the reporter, as follows:

" 'Being an enlisted man in the United States Navy during the time that you were engaged in your duties, are you permitted to make suggestions or give orders to your superior in command?'

"The Witness: I am not."

That you are directed to ignore.

You are instructed, gentlemen of the jury, to disregard the following testimony of Commander Ellis M. Zacharias, referring to a meeting, on redirect examination, which was held in the of-[453] fice at San Pedro.

"The Witness: This meeting was called at my instigation for this particular group, for the purpose of giving them instruction—

"Mr. Pacht (Interrupting): Just a minute."

By Mr. Harrison: "Was it restricted to any particular group?"

"A. I will discontinue. You say was it restricted?"

"The Court: Was the call restricted to any particular group?"

"The Witness: It was."

"By Mr. Harrison:

"Q. Who was present, besides the ones you have named?"

"Mr. Stone. Pardon me a moment. I think that question has been answered two or three times."

"That you are instructed to disregard."

The next motion is 2, sub-division 2 of 5, appearing on page 648, during the testimony of Commander Zacharias.

You are instructed to disregard the following (this seems self-explanatory):

"Q. Commander Zacharias (question being by Mr. Stone)—I am sorry. I guess it is by Mr. Harrison."

"Commander Zacharias, I will ask you whether or not the initials 'J. A. C. L.' have any well known meaning in your district Intelligence Office"—

I am sorry. That motion should have been denied. You may disregard that portion of my quotation just made, but do not disregard the evidence.

May it be stipulated that that need not be read again?

Mr. Pacht: Yes, so stipulated.

Then referring again to the matter of which I spoke a few moments ago, the two paragraphs of that exhibit No. 3, in which Mr. Stanley said that he was alone when he made the investigation: [454]

"Q. Did anybody assist you in making that investigation?

"A. No, sir; I was alone."

By Mr. Harrison: "Q. After you made the investigation did you make any report covering such investigation?

"A. Yes, sir:

"Q. And what did you do with that report?

"A. Turned it over to Mr. Claiborne.

"Q. Was Mr. Salich with you at any time

that you made such reports or investigations?

"A. No, sir.

"Q. And was the contents of that report ever communicated by you to Mr. Salich?

"A. No sir."

That, gentlemen, you are instructed to disregard in arriving at the guilt or innocence of either the Defendant Mikhail Gorin or Natasha Gorin.

The same witness on the stand, the following you are instructed to disregard:

"Q. Mr. Stanley, do you know about when you made such investigation? (Referring to the same subject matter as the previous conversation.)

"Mr. Stone: I now object to the materiality and relevancy and competency of this testimony.

"The Court: The objection will be overruled, and an exception allowed.

"The Witness: I do.

By Mr. Harrison:

"Q. When was it?

"A. It was during the month of September, 1938.

"Mr. Harrison: I think that is all. Just a moment. I believe, if the Court please, for the purposes of the record it [455] should be fully disclosed as to just what portion of this document is referred to, and on that theory, I would like to ask the witness a question or two more, if I may.

"The Court: You may.

"By Mr. Harrison:

"Q. Mr. Stanley, referring to this again, do I understand that the portion that you claim was covered by an investigation and report made by you, covers the last two paragraphs, the first of which consists of two lines and one word, the second paragraph of three lines, all in typewriting?

"A. It would be four lines—

"Q. Four lines and three words?

"A. Yes, sir.

"Mr. Harrison: That is all."

You are instructed to disregard that in arriving at the guilt or innocence of the Defendants Gorin.

[456]

Defendant Gorin requested the Court, in writing, to instruct the Jury as follows:

"Defendants' Instruction No. G-29

As defined in the statutes in question in this case, the National Defense relates solely and is limited to the following places and things, namely:

Any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dock yard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, signal station, building, office, other places connected with the National Defense owned or constructed or in progress of construction by the United States, or under the control of the United States, or any of its officers or agents, or within the exclusive jurisdiction of the United States, or of any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war, are being made, prepared, repaired, or stored under any contract or agreement with the United States, or by any person on behalf of the United States."

"Defendants' Instruction No. G-37

Unless you find beyond a reasonable doubt from the evidence in the case that the defendants Gorin copied, took, made, obtained, or attempted or induced or aided another to copy, take, make or ob-

tain a sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing or note concerning a vessel, aircraft, work or defense, Navy yard, Naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, signal station, building, office, or other place connected with the national defense, as that term is otherwise in these instructions defined, and unless you further find that such sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing or note connected with said national defense was obtained with intent or reason to believe that the same was to be used in the injury of the United States or to the advantage of a foreign nation, you may not convict the said defendants Gorin, or either of them, but on the contrary, they are entitled to an acquittal at your hands. To put it another way, it is not sufficient for you to find that any document or report was obtained by the defendants Gorin, or either of them, from the Naval Intelligence. You must in addition find that such document was a sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing or note relating to said national defense, and concerned some vessel, aircraft, work of defense, Navy yard, Naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone,

wireless, or signal station, building, office, or other place connected with said national defense."

"Defendants' Instruction No. G-39

The evidence in this case discloses that many of the reports enumerated in the indictment deal with the arrival and departure of certain Japanese officials, Naval officers, and Japanese businessmen; other of said reports deal with the activities of Japanese fishing boats in Southern California waters; still others of said reports deal with the political and economic opinions of various and sundry persons; still other of said reports deal with the conduct of certain Japanese with relation to the support of the Japanese war in China, and the raising of funds for the prosecution of said war.

If you find that these reports or the substance of them, or any of them, were obtained by the defendant Mikhail Gorin from [457] the defendant Salich, or from the Naval Intelligence, that fact or circumstance would not make the defendant Gorin guilty of any of the offenses charged in the indictment. On the contrary, he is entitled to an acquittal at your hands.

None of said matters relate to or concern the national defense as I have heretofore defined that term to you."

"Defendants' Gorin Instruction No. BB

You are instructed that if you find and believe from the evidence that the defendant Salich was instructed by his Superior and directing officer to

continue contact with defendant Gorin, theretofore reported to said officer, after having reported contacts with him to his said superior officer, and if you find further, that Salich was instructed to give to Gorin information of a nature and character which could be obtained from newspapers and magazines and attempt to get from Gorin information of advantage to the office of Naval Intelligence, and if you further find that Salich pursued such a course during the times mentioned in the indictment, with or without disclosing said instructions to Gorin, you are instructed that there could be no conspiracy by or between said defendants as charged in Count Three of the indictment, and you are to return a verdict of acquittal as to all defendants on said count."

"Defendants' Gorins Instruction No. CC

You are instructed that none of the reports or information introduced in evidence in this case, or therein referred to, is connected with or relates to the national defense, as that term is used in Sections 31, 32 and 34 of Title 50 of the United States Code, and that therefore you are instructed and directed to return a verdict of acquittal in favor of all defendants on all counts of the indictment."

[458]

"Defendants' Gorin Requested Instruction No. GG.

You are instructed that Government exhibits 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 5m, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 6q, 6r, 6s, 6t, 6u, 6v, 6w, 6x, 6y, 6z, 6aa, 6bb, 6cc, 6dd,

being files of the United States Office of Naval Intelligence, numbered respectively, 833, 841, 889, 1145, 1139, 1133, 1132, 1130, 1129, 897, 1110, 1104, 1081, 570, 560, 548, 546, 536, 535, 534, 532, 530, 529, 528, 525, 519, 514, 507, 505, 504, 503, 495, 489, 482, 480, 479, 477, 472, 469, 466, 465, 439, 435, and the information contained in them, do not, and each of them does not, affect or relate to the national defense."

"Defendants' Gorin Instruction No. FF-1

You are advised that the term "to the advantage of any foreign nation" as used in Sections 31, 32, and by reference in Section 34 of the Espionage Act, is defined as and is to be taken by you as meaning an advantage as against the United States. It does not mean to the advantage of a foreign nation against another foreign nation, but only as against the United States, unless it would also be of advantage against the United States. The word "advantage" is specifically defined as meaning a condition of being in advance or superior or in a superiority of state or position or condition or circumstance, opportunity, or means particularly favorable to success or to any desired end."

"Defendants' Gorin Requested Instruction
No. FF-2

You are instructed that, if you arrive and agree upon a verdict of not guilty in favor of the defendant Natasha Gorin on the third count of the indictment, that is, on the conspiracy count, as to which count she alone is charged, I then charge you that

you must also find and return a verdict of not guilty as to the other two defendants upon count three of the indictment, that [459] is, the conspiracy count."

"Defendants' Gorin Instruction No. AA

You are instructed that, as I have heretofore instructed you, a conspiracy must be founded and based upon an agreement by and between each of the defendants charged to accomplish the transmittal and communication to the U.S.S.R. of "documents, writings, plans, notes, instruments, and information relating to the national defense". An agreement of necessity means a meeting of minds as to the object to be accomplished. In this case it is charged in the indictment that the illegal purpose as to which defendants Salich and Gorin agreed, was to so transmit the "documents, writings, plans, notes, instruments, or information relating to the national defense", and I charge you that if you find and believe from the evidence that there was at no time any intent or purpose on the part of the defendant Salich to give any of such specifically mentioned items, even though you may believe that the defendant Gorin desired to and wanted to get such items, that there was no meeting of minds between the defendants Salich and Gorin sufficient to constitute an agreement or combination within the meaning of the law of conspiracy, sufficient to constitute a conspiracy, and you will return a verdict of acquittal in favor of the defendants as to the third count of the indictment."

"Defendants Gorin Instruction No. T

You are instructed that the acts charged, that is the alleged obtaining or transmitting or conspiracy to transmit reports of the office of Naval Intelligence, or information therefrom, by the defendants, must in each instance have been done with the intent on the part of defendants or reason on their part to believe "that it was to be used to the injury of the United States or to the advantage of" the U.S.S.R. I desire to define certain of [460] these words to you. "Injury" as used in the statutes under which this indictment is being prosecuted means damage or hurt done to or suffered by the United States in a military sense. Likewise, the word "advantage", as used in the statutes as a military connotation. The word "advantage" by itself means the condition of being in advance or superior or in a superiority of state of position, or any condition, circumstance, opportunity, or means particularly favorable to success or to any desired end. To give the meaning that the statute contemplates, there must be found that the information was obtained or disclosed with the intent or reason to believe that it was to be used to the injury of the United States and to the advantage of the U.S.S.R. as against the United States, all in a military sense. In other words the defendants in order to be found guilty of the specific intent charged in the indictment and required under the statute must have had a specific intent or reason, as ordinary persons would have, to believe that the information obtained or transmitted

was to be used to do harm or injury to the United States in a military way, and to give to the U.S.S.R. a condition of superiority favorable to success as against the United States. The advantage must be both in a military sense and be an advantage not merely academic or general but an advantage as against the United States."

"Defendants' Instruction No. G-41

You are instructed that the defendants are charged in the second count of the indictment with communicating, delivering and transmitting to the Union of Soviet Socialist Republics the confidential reports of the investigators of the United States Naval Intelligence specifically described in said second count, and in the third count of said indictment with conspiring so to do. You are further instructed that the defendant Mikhail Gorin cannot be found guilty under said second or third count of so transmitting and com- [461] munication said reports solely by proof of the fact that he is a citizen or national of said Union of Soviet Socialist Republic or an agent or representative thereof. In other words, he cannot be said to transmit or deliver any of said reports to himself and it must appear from the evidence beyond a reasonable doubt that said Mikhail Gorin did some other act or communicated with some other person or agency in communicating, delivering and transmitting said reports."

"Defendants' Instruction No. G-19

You are instructed that it is your duty as jurors to deliberate and confer one with the other fully and honestly about the questions herein involved under these instructions, but you are further instructed that after having fully considered and weighed the various points of view that may arise in your discussions among you that you are individually to arrive at your own honest judgment as to the guilt or innocence of each particular defendant on each count. It is not your duty, as a juror, to compromise your verdict with a view to rapid and hasty decision for purposes other than that of arriving at the sure and frank truth as it actually exists in each juror's mind, and if, after such discussions, any of you have a reasonable doubt as to the guilt of any or all of the defendants, it is not only your right but your duty to maintain your position and not to compromise your verdict."

"Defendants' Gorin Instruction No. K

You are instructed that unless you find and believe upon the evidence that it was the intention of the defendants Gorin to obtain information or to transmit information to the injury of the United States and to the advantage of the U. S. S. R. in a military sense, that is, so that it would do harm to the United States in a military way, or would aid the U. S. S. R. against the United States in a military way, such acts and conduct on their part

does not have [462] the necessary element of intent required under the law, and you will acquit said defendants."

Defendant Salich, in writing, requested the Court to instruct the jury as follows:

"Defendant Salich Requested Instruction No. X

The second element which must be proved to you beyond a reasonable doubt for a conviction of the defendant Hafis Salich on the first count of the indictment is that the information obtained by him, if you find that he obtained any, related to the armed defense of the United States so closely that the ordinary reasonable man would immediately perceive that its disclosure would directly endanger the armed defense of this nation in time of war. In determining this question you should consider the content of that information; whether or not it relates to any military works of the United States, such as navy yards, or forts, or munitions centers, or any property which is prepared for military use in time of war. You should likewise consider the possible uses to which such information could be put by another nation in making an armed attack on this country; whether or not the possession of such information by a foreign nation would endanger the success of our armed forces in time of war in their task of defending our shores; and whether or not the fact of such danger from the disclosure of that information would be immediately apparent to the ordinary reasonable man."

Also the further instruction as follows:

"You are instructed that Government exhibits 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 5m, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 6q, 6r, 6s, 6t, 6u, 6v, 6w, 6x, 6y, 6z, 6aa, 6bb, 6cc, 6dd, being files of the United States Naval [463] Intelligence Service numbered respectively, 833, 841, 889, 1145, 1139, 1133, 1132, 1130, 1129, 897, 1110, 1104, 1081, 570, 560, 548, 546, 536, 535, 534, 532, 530, 529, 528, 525, 519, 514, 507, 505, 504, 503, 495, 489, 482, 480, 479, 477, 472, 469, 466, 465, 439, 435, and the information contained in them do not, and each of them does not, affect or relate to the national defense."

Whereupon the Court gave the following instructions to the Jury:

"The Court: Gentlemen of the jury, under the Federal practice, the judge is privileged to comment on the facts of the case. You must understand, however, that such comments are mere matters of opinion which you, the jury, may disregard if such comments conflict with your own conclusions upon the facts.

The reason for this is that the jurors are the sole and exclusive judges of the facts in each case.

I feel, however, that I may safely leave the determination of the facts in this case to you, being satisfied, as I am, that you are fully capable of determining them without my aid.

However, it is the exclusive province of the Court to instruct you as to the law applicable to the case,

in order that you may render your verdict upon the facts as determined by you and the law as given to you by me in these instructions. It would be a violation of your duty for you to attempt to determine the law, or to base any verdict, upon any other view of the law than that given you by the Court.

Whether the subject matter may be treated first or last in these instructions has nothing whatsoever to do with their relative importance. Repetition, if any occurs, does not make for greater importance. Any emphasis that you may give to any part of the instructions is intended to merely make the same more clear to you.

All requested instructions and all objections to proposed [464] instructions which have not been presented in a timely manner and in the form, with citations and authority, as prescribed by law or by the rules of this court are rejected.

You are instructed and directed to return a verdict of not guilty in favor of the Defendant Natasha Gorin on Count 1 of the indictment.

You are instructed and directed to return a verdict of not guilty in favor of the Defendant Natasha Gorin on Count 2 of the indictment. filed by the Government against these defendants is not evidence, nor is the mere filing of said indictment to be considered by you as proof of the facts charged in it. However, so that you may have a clear understanding of what the indictment charges you are instructed as follows:

This indictment charges the defendants in three counts with an offense against the United States. Count 1 of the indictment, briefly, pertains to the charge of obtaining information respecting the national defense by the defendants.

Count 2 charges, briefly, the communicating or disclosing of information pertaining to the national defense by the defendants or by one of the defendants, to one or more of the other defendants, which persons are charged to be citizens or subjects of the Union of Soviet Socialist Republics.

Count 3 is the conspiracy count and charges in substance that the defendants did unlawfully confederate and agree to obtain the information respecting the national defense of the United States and thereafter sets out certain overt acts alleged to have been performed by one or more of said defendants in the furtherance of said conspiracy.

When you retire to the jury room for your deliberations, you will be permitted to take the indictment with you, so that you may [465] have before you the formal statement of the specific accusations against the defendants, and I have not attempted to be specific in connection therewith.

By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A

defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one

that is unreasonable, in order to justify a certain ver- [466] dict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the Government or the defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all,

and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

The mere fact that a witness is connected with the United States Government in any capacity whatsoever does not mean that the testimony of such witness is entitled to any greater weight or credence by reason of such fact alone. You will consider the testimony of any officer or employee of the United States Govern- [467] ment the same as you would consider the testimony of such person if he were not so employed.

There are two kinds or classes of evidence recognized and admitted in courts of justice, upon either of which jurors may return a verdict. One is known as direct evidence. Direct evidence is that which proves a fact in dispute directly, without any inference or presumption and which in itself, if true, conclusively establishes that fact. The testimony of eye witnesses to the commission of an offense is evidence of this character. The other class of evidence is indirect evidence or circumstantial evidence. Indirect evidence is that which tends to establish the fact in dispute by proving another and which, though true, does not of itself conclu-

sively establish that fact but which affords an inference or presumption of its existence. Such evidence may consist of statements made by a defendant, plans laid for the commission of a crime; in short, any acts, declarations or circumstances admitted in evidence tending to establish the offense charged and to connect the defendant with its commission. For example: The witness testifies to an admission of a party to a fact in dispute. This tends to prove a fact, from which the fact in dispute is inferred.

To warrant a conviction on circumstantial evidence, each fact necessary to the conclusion sought to be established must be proven by competent evidence beyond a reasonable doubt, and all the facts necessary to such conclusion must be consistent with each other and with the main fact sought to be proved; and the circumstances taken together must be of a conclusive nature, leading on the whole to a satisfactory conclusion and producing a reasonable and moral certainty that the accused committed the offense charged. The mere union, of a limited number of independent circumstances, each of an imperfect and inconclusive character will not justify a conviction; they must be such as to generate and to justify full belief. [468] according to the standard rule of certainty. It is not sufficient that they coincide with and render probable the guilt of the accused, but they must exclude every other reasonable hypothesis. No other conclusion but

that of guilt of the accused must fairly and reasonably grow out of the evidence; the facts must be reasonably incompatible with innocence, incapable of explanation upon any other reasonable hypothesis than that of guilt.

Partial variances in the testimony of different witnesses, on minute and collateral points, are of little importance, unless they be of too prominent and striking nature to be ascribed to mere inadvertence, inattention, or defect of memory; that it so rarely happens that witnesses of the same transaction, perfectly and entirely agree on all points connected with it, that an entire and complete coincidence, in every particular, so far from strengthening their credit, not unfrequently engenders a suspicion of practice and concert; and that in determining upon the credence to be given to testimony, by the jury, the real question must always be, whether the points of variance and discrepancy be of so strong and decisive a nature as to render it impossible, or at least difficult, to attribute them to the ordinary sources of such variance, viz., inattention or want of memory.

If upon a fair and impartial consideration of all of the evidence in this case, you should find that there are two reasonable theories supported by the testimony in this case, and that one of such theories is consistent with the guilt of any of the defendants, and the other of such theories is consistent with innocence of any of the defendants, then it

is the policy of the law, and the law makes it your duty, to adopt the theory which is consistent with the innocence of such defendants, and in such case to find such defendants not guilty.

A defendant is a competent witness on his own behalf, and the fact that he is the defendant is not of itself sufficient to im- [469] peach or discredit his testimony, though the jury are entitled to take into consideration his interest in the event of the prosecution in determining his credibility.

One defendant has offered himself as a witness and has testified in the case. Having done so, you are to estimate and determine his credibility in the same way as you would consider the testimony of any other witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendant may have in the case, his hopes and his fears, and what he has to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to the bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men.

You are to draw no inference of guilt against the Defendants Mikhail Gorin and Natasha Gorin, because they have not testified as witnesses in their own behalf. As heretofore stated in these instructions, they are presumed innocent of any crime, and

this presumption remains with them throughout the trial, until and unless the Government proves them guilty to the jury's satisfaction beyond a reasonable doubt. All defendants are free to testify or not, as witnesses in their own behalf, but no presumption or inference of guilt or any other prejudice against them can be indulged from their failure to testify.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to de- [470] liberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testi-

mony which was ordered stricken out, must be wholly left out of account and disregarded.

The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the facts. The law you must accept from the Court as correctly declared in these instructions.

You are instructed that in considering the evidence in this case you must consider each and every defendant individually.

You are instructed as a matter of law that you must not be antagonized at all by the fact that any of the defendants are aliens. All men, whatever their citizenship, stand equal before the law.

The defendant at the outset of the trial is presumed to be an innocent man. He is not required to prove himself innocent or to put in any evidence at all upon that subject. In considering the testimony in the case you must look at the testimony and view it in the light of that presumption which clothes the defendant, that he is innocent, and it is a presumption that abides with him throughout the trial of the case until the evidence convinces you to the contrary beyond all reasonable doubt.

From time to time, counsel for the several defendants have [471] interposed objections to evidence. I charge you that the counsel for the several defendants not only had the right, but had the duty

to make any and all objections which they deemed advisable or appropriate, and no inference or presumption can or should be indulged in by you against the defendants or any of them by reason of the interposition of such objections by any of the counsel for any of the defendants.

When the statements of a party are introduced in evidence by the Government, all of the statements are to be taken together, and the Government is bound by such statements unless they are shown to be untrue by the evidence. Such statements are to be taken into consideration by the jury as evidence in connection with all the other facts and circumstances in the case.

You are instructed that there are certain regulations promulgated by the Secretary of the Navy and certain orders issued by him and by various administrative officers of the Navy Department from time to time, to regulate and govern the procedure, practices and functions of the various service branches, divisions and offices of the Navy, and its personnel, but I charge you that such regulations and orders cannot be considered by you in any wise as being a part of or in any wise interpreting or giving any meaning or construction to the statutes under which the indictment in this case is found, and this prosecution is being had. Neither are you to consider in any wise the opinions or conclusions of any witness who has testified before you relative to his interpretation or construction of the

statutes referred to or the functioning of the Navy or the office of Naval Intelligence thereunder. You are only to consider, in connection with the law of the case, those instructions which I give to you, and you are to consider as the law of this case which is to govern you, only these instructions and the meaning and interpretation of the statutes, and the words and phrases therein used, as I have herein defined them to you. [472]

You are instructed that during the course of the trial certain stipulations have been entered into in open court relative to certain facts appearing. By such stipulations the defendants admit the facts stipulated to, but do not concede the guilt of any of the defendants. The only purpose of the stipulations is to permit quick proof of a fact which the Court may deem material. You are to take such stipulations only as proof of the specific fact or facts covered thereby.

You are instructed that you are to in no wise consider as a fact in determining the innocence or guilt of the defendants Gorin, nor are you to draw any inference of any kind whatever, from the testimony and statements related to you by the witness G. V. Dierst relating to or concerning any telephone calls or communications made by the defendant Mikhail Gorin to the Russian Embassy, or any officer or Charge d'Affaires, of the Union of Soviet Socialist Republics at Washington, D. C. No inference of guilt can be drawn from such acts.

The national of any friendly country has a right to communicate with his country's representatives in Washington.

You are instructed that the Union of Soviet Socialist Republics is now, and ever since the 16th of November, 1933, or thereabouts, has been a foreign nation regularly recognized by the United States of America.

You are instructed that the visit of M. I. Ivanushkin, Vice-Consul of the U. S. S. R., to the Defendant Mikhail N. Gorin when he was in the County Jail, was in accordance with the well settled practice and procedure recognized by international law. It was the duty and obligation of such a Vice-Consul in accordance with said practice to visit Mr. Gorin, as a Russian National, at as early an opportunity as possible. No inference can be drawn to support any of the allegations of the indictment herein by reason of said visit alone. As to any testimony relating to any statements made by Mr. Gorin during such a visit, you are the sole judges as to its [473] weight, even as you are the sole judges as to the credibility of the witnesses and the effect to be given to any such statements, if you find as a fact that such statements were made.

As the Court has heretofore advised you, it has granted a motion of directed verdict as to the Defendant Natasha Gorin on the first and second counts of the indictment. I charge you that the fact that the Court refused to grant defendant's

motion as to the third count of the indictment shall not be taken by you in any wise as indicating the Court's opinion as to her guilt or innocence of the offense therein charged. You are the sole judges of the evidence and of her guilt or innocence, as the Court has herein instructed you.

You are instructed that no inference or presumption of guilt or complicity can arise against the Defendant Natasha Gorin by reason of the fact that she is the wife of the Defendant Mikhail Gorin. You may consider such fact, along with the other facts proved to you upon the trial, but, as I have heretofore instructed you, each defendant is to be considered by you separately, and even though you find and believe that the Defendant Mikhail Gorin committed some of the acts or did some of the things charged in the indictment, the mere fact that Natasha Gorin is his wife cannot be considered by you as evidencing any knowledge on her part of such acts, and you are to draw no inference against her solely by reason of such relationship.

You are instructed that where the letters "U. S. S. R." are used in these instructions, or in the evidence in this case, that such letters are taken to mean an abbreviation for the Union of Soviet Socialist Republics.

You are instructed that regardless of the fact that you may not agree with the economic or political philosophy which is reputed to be that governing the affairs of the Union of Soviet Social-

ist Republics or any practices you may refer to as communism [474] and that you do not agree with or do hold in disfavor certain reputed practices of that Government and its officials, nevertheless your opinion or feelings in such regard must be entirely put aside in weighing the evidence in this case. I charge you that the defendants Gorin are entitled to a fair and impartial trial pursuant to the laws of the United States.

You are instructed that the defendant Hafis Salich caused to be served upon Henri deB. Claiborne a subpoena duces tecum requiring Mr. Claiborne to produce in this court certain reports and memoranda of the United States Naval Intelligence Service found in the files of that service in the San Pedro office. Likewise, the Government requested him to produce certain files. Upon the order of the Secretary of the Navy, or the Commandant of the Eleventh Naval District, or both, Lieutenant Claiborne declined to produce those documents upon the ground that their disclosure would be detrimental to public interest and therefore privileged from disclosure in this court. The Court held that these documents were so privileged and refused to require Lieutenant Claiborne to produce them in evidence.

You are therefore instructed to disregard, in your deliberations, the fact that there has been no production in this court by either the Government or any defendant or any other reports of the United

States Naval Intelligence Service than those mentioned in the indictment.

Natasha Gorin not being now involved in Counts I and II, this leaves for your consideration the question as to the **guilt** or innocence of Defendants Hafis Salich and Mikhail Nicholas Gorin under Counts I and II and the question, as to the guilt or innocence of all three defendants, Salich, Gorin and Mrs. Gorin, under Count III. The Court will now instruct you on the law specifically applicable to the crime charged in Count I, as defined in Section 31 of Title 50 United States Code, as follows:

[475]

“Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in

which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section 36 of this title; or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes or obtains, or attempts, or induces or aids another to copy, take, make or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; * * *

shall be guilty of an offense against the United States. On this count you are to consider only Defendants Salich and Mikhail Gorin.

The Court now instructs you that this crime, as defined in the statute and as charged in the indictment, has four distinct elements. All of these elements must be established by the Government beyond a reasonable doubt, as to each defendant, in order to permit a verdict of guilty on this count against such defendant. These four elements are as follows: [476]

(1) The fact of taking or obtaining must be established;

(2) There must be a purpose of obtaining information respecting the national defense;

(3) There must be an intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of a foreign nation (U. S. S. R.);

(4) The information so taken must, in fact, relate to the national defense.

If you find that the Government has failed in its proof as to any one of these elements as to either of the defendants, you must acquit such defendant.

On the other hand, if you find that all of the elements have been proven as to either or both defendants, it is then your duty to bring in a verdict of guilty as to such defendant or as to both such defendants.

The Court will now instruct you in detail as to the law on each of these elements.

As to the first element: As to Salich, you must be convinced beyond a reasonable doubt that Hafis Salich did in fact, or that he attempted to copy, take or obtain information contained in the Naval Intelligence files, designated specifically by number in the indictment. As to Mikhail Gorin, you must be satisfied beyond a reasonable doubt that he copied, took, or obtained, or attempted or induced or aided another to copy, take, or obtain information contained in the Naval Intelligence files designated specifically by number in the indictment.

As to the second element: This element is a purpose of obtaining information respecting the national defense.

Such purpose must be proved beyond a reasonable doubt, as to each defendant. Before you can convict either or both of the defendants you must be satisfied beyond a reasonable doubt that such defendants or both of such defendants, had such purpose.

Such purpose may be subject to proof only [477] by circumstantial evidence—that is, by facts and acts from which it may be inferred. If the inference from proven facts and acts are as consistent with an innocent as with a guilty purpose, the point is not proved. But on the other hand, if they exclude every hypothesis, except that of guilt, the point is proved.

As to the third element: You are instructed that the law requires only that the Government prove either an intent or a reason to believe that the information was to be used either to the injury of the United States or to the advantage of the foreign nation—in this case, the Union of Soviet Socialist Republics. Hence, it will be sufficient to satisfy the requirements of the law if, for example, the Government proves to you beyond a reasonable doubt that both Salich and Gorin had reason to believe that the information disclosed was to be used to the advantage of Russia. In such case, you would be entitled to find that each defendant had the criminal intent specified in the statute.

The intent or purpose of a person is from its very nature a matter which has to be proved by cir-

cumstantial evidence. It is obvious that it is impossible to examine into the mind of the person while he is committing an alleged crime to ascertain just what was his intent. It is also true that if a person is about to commit a crime, or during the course of committing a crime, he avoids as far as possible revealing what his intentions are. The explanation which the defendant makes or what was his intent even though quite plausible is not conclusive as to just what was his intent.

This intent the Government must prove to you as a fact; but intent can be proved by facts and acts from which it may be inferred. If the inferences from proven facts and acts are as consistent with an innocent as with a guilty intent, the point is not proved. But on the other hand, if they exclude every hypothesis except that of guilt, the point is proved. In considering these [478] facts and acts, and the inferences drawn from them, you should consider whether or not there are any circumstances brought out in the evidence in this case which are consistent with some intent other than that this information be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. You should consider likewise the character of the information here in question—whether or not it is susceptible to use by the Union of Soviet Socialist Republics, and whether or not the Defendant Hafis Salich knew facts from which he concluded, or reasonably should

have concluded, that this information could advantageously be used by the Union of Soviet Socialist Republics.

In this connection you are not to be governed solely by any explanations given by any defendant as to his intent, but you shall look to all of the evidence, circumstantial or otherwise, in arriving at what was the intent or purpose of said defendant as charged in the indictment. I further charge you that the defendant's interpretation of what he understood the law to be with respect to whether or not his acts were contrary to the statute is not conclusive. It is not what the defendant believed his acts amounted to so far as his guilt or innocence is concerned, but you are to consider all of the evidence and the law as I instruct you as to whether or not the acts of any defendant may or may not have violated the statutes governing the trial of this case.

An honest but mistaken belief on the part of any defendant that what he was doing was lawful, even though unethical, will not exonerate him, if in fact you find that the intent of such defendant was actually the unlawful one contemplated by the statute.

While it is a fundamental rule that men are presumed to intend the natural consequences of their acts, yet this presumption cannot prevail in the face of positive proof of a specific intent different from that required by the statute. When such evidence [479] is present, it devolves upon the Gov-

ernment to present affirmative evidence of the existence of the required unlawful intent.

You cannot surmise or speculate that the defendants intended and had reason to believe that the information was to be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. The intent or reason to believe that the information was to be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics is a fact charged which must be proven to the same extent as any other fact in the case.

Hence, if you find from the evidence that the Defendant Hafis Salich and Mikhail Gorin exchanged certain information relative to certain activities of Japanese in the United States or elsewhere, but that there was no intent and no reason to believe on the part of either of said defendants in so exchanging information that there would result an injury to the United States or advantage to the Union of Soviet Socialist Republics, then such acts and conduct on the part of said defendants did not constitute an offense as charged in the indictment.

As to the fourth element: You must be satisfied beyond a reasonable doubt that the information alleged to have been disclosed did in fact relate to the national defense, as that term will now be defined for you by the Court.

The statutes covering this type of case do not require to establish the crime of espionage that

the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation. The document need not in fact be vitally important or actually injurious. The document or information must be, however, connected with or related to the national defense.

The mere fact that a report may refer to an individual or his activities does not mean that the report concerning such person [480] is connected with the national defense.

The mere fact that a report has been made by the United States Naval Intelligence, or one of its operatives, or commander, or any officer in charge thereof, concerning an individual or his activities, does not in and of itself mean that such report relates to the national defense.

The character of each report must be determined by considering the nature of the contents of that report, and whether or not the *contents* related to the national defense.

You are instructed that the term "national defense" includes all matters directly and reasonably connected with the defense of our nation against its enemies. The first lines of defense naturally are the men, the ships and the guns of the navy, the men, the planes and the guns of the air corps, and the men, forts and guns of the army. Behind these—but none the less necessary if the army and navy are to be kept in the field in wartime or well-prepared in peacetime—are those places and things

which are essential to the storage of reserves, the inter-communication of armed forces, the transportation of war supplies, the reconditioning of war-worn materials and men, and the manufacture of war supplies.

As you will note, the statute specifically mentions the places and things connected with or comprising the first line of defense when it mentions vessels, aircraft, works of defense, fort or battery and torpedo stations. You will note, also, that the statute specifically mentions by name certain other places or things relating to what we may call the secondary line of national defense. Thus some at least of the storage of reserves of men and materials is ordinarily done at naval stations, submarine bases, coaling stations, dock yards, arsenals and camps; all of which are specifically designated in the statute. The inter-communication of armed forces is carried on at telephone, telegraph, wireless [481] or signal stations, which the statute designates. The transportation of war supplies is accomplished by canals and railroads, similarly designated. The reconditioning of war-worn materials and men is accomplished, among other places, at naval yards and naval stations and the manufacturing of war supplies is accomplished at factories and mines. The general words, "building or office" are also mentioned.

You are instructed in the first place that for purposes of prosecution under these statutes, the

information, documents, plans, maps, etc., connected with these places or things must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation. Thus a map of a mine-field would be a document directly affecting the usefulness of that mine-field, for if such map should fall into the hands of another country the ships of that power might easily pass through the mine-field. Thus its usefulness as an instrument of national defense would be nullified as against that nation.

Similarly, even information that representatives or agents of some foreign power were in possession of such a map or plan or the map or plan of a shore-battery, might likewise directly concern the usefulness of that mine-field or that battery as an instrument of defense. Manifestly it might have to be rebuilt or changed. Such information might be essential to any successful naval strategy in that area during wartime.

You are instructed that in the second place the information, documents or notes must relate to those angles or phases of the instrumentality, place or thing which relates to the defense of our nation; thus if a place or thing has one use in peacetime and another use in wartime, you are to distinguish between information relating to the one or the other use. Thus an auto factory may make automobiles in time of peace and tanks in wartime.

Information relating to its output of automobiles might not be connected [482] with the national defense; information relating to its output of tanks might be related to the national defense.

Or, again, an air photo, from 2,000 feet altitude of terrain surrounding a battery might contain many things unimportant to the national defense, yet from a military standpoint it might be intimately connected with the efficiency of that battery, since from such photo an enemy might deduce the strong and the weak points in the position of such battery, the angle of fire of its guns, the size of its gun emplacement, and various other facts of military importance.

The information, document or note might relate to physical substances or instruments of warfare, either of our own forces or those of another power. This might include guns, gas masks, helmets, or any other part of army or navy equipment. Such information, document or note might conceivably concern a chemical whose peculiar properties might enable it to eat through the plates of a warship or destroy communication cables, or cables connecting mines with their moorings.

The information, document or note might also contain statistics or figures relating to some place intimately connected with the national defense. For example: The document might contain the exact draught of every vessel in the United States Navy. This information would enable the enemy

to know precisely into how shallow waters each vessel in our fleet might venture.

The information, document or note might also relate to the possession of such information by another nation and as such might also come within the possible scope of this statute. Thus a document narrating the fact that a certain foreign power has definite information as to the exact draught of our vessels might be vital to the military and naval defense of our country. For from the standpoint of military or naval strategy it might not only be dangerous to us for a foreign power to know our weaknesses and our [483] limitations, but it might also be dangerous to us when such a foreign power knows that we know that they know of our limitations.

You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions."

"The crime charged in count two is defined in Section 32 of Title 50, United States Code, as follows:

"Whoever, with intent or reason to believe that it is to be used to the injury of the United States, or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, * * *"

On this count you are to consider only Defendants Salich and Mikhail Gorin. The Court now instructs you that this crime, as defined in the statute and as charged in the indictment, has four distinct elements. All of these elements must be established by [484] the Government beyond a reasonable doubt, as to each defendant, in order to permit a verdict of guilty on this count against such defendants.

These four elements are as follows:

First, the fact of disclosure must be proved;

Second, the disclosure must be made to representatives or citizens of a foreign nation (U. S. S. R.);

Third, the guilty intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of a foreign nation (U. S. S. R.) must be present.

Fourth, the information so taken must, in fact, actually relate to the national defense.

If you find that the Government has failed in its proof as to any one of these elements as to either of the defendants, you must acquit such defendant. On the other hand, if you find that all of the elements have been proven as to either or both defendants, it is then your duty to bring in a verdict of guilty as to such defendant or defendants.

The Court will now instruct you in detail as to the law on each of these elements.

As to the first element: As to Salich, you must be convinced beyond a reasonable doubt that Hafi Salich did, in fact, or attempted to, communicate, deliver, or transmit information contained in the Naval Intelligence files designated specifically by number in the indictment.

As to Mikhail Gorin, you must be satisfied beyond a reasonable doubt that he communicated, delivered, or transmitted to another, or that he aided, assisted, or induced Salich to communicate, deliver, or transmit to Gorin or another or other information contained in the Naval Intelligence files designated specifically by number in the indictment. [485]

It is, of course, true, as a matter of law, that Mikhail Gorin could not communicate, deliver or transmit to himself notes, documents or information, nor attempt to do so. However, he could transmit them to another person, or he could aid or induce Salich to communicate, deliver or transmit such information to him, and if you find, as a fact, that Gorin did either one of these things, the requirements as to this element will be satisfied.

As to the second element: The Government must prove to you beyond a reasonable doubt that Defendant Mikhail Gorin was, on or about the 15th day of September 1937, and at all times since that date has been, a representative, or an officer, or an agent, or an employee, or a subject, or a citizen of the Union of Soviet Socialist Republics.

In this particular case it has been stipulated that the defendants, Mikhail Nicholas Gorin and Natasha Gorin, were at all times and are citizens of the Union of Soviet Socialist Republics.

If you find this fact not to have been established, you are to acquit both Salich and Mikhail Gorin on the second count.

As to the third element: The question of intent—and the fourth element—the necessity of the information relating to the national defense—the law as already defined for you under count one is applicable here and you are to consider that the instruction as to intent and national defense which the Court has heretofore given you in connection

with count one is to govern your deliberations under count two on these elements.

Again, as to whether or no the information involved in this count concerned, regarded or was connected with the national defense is a question of fact solely for the determination of the jury, under these instructions.

Gentlemen, much testimony has been introduced in this case tending to prove statements and admissions made by the Defendant Salich during the course of conversations with, or in the presence [486] of, Mr. Dierst, Mr. Hanna, Mr. Stanley, Mr. Hanson, Commander Zacharias, or Commander Claiborne, and possibly other Government agents or other persons,

As to the Defendant Mikhail Gorin, who is jointly charged under Counts 1 and 2 of the indictment, you are instructed to ignore and to entirely disregard all and every part of such statements oral or written as testified to by witnesses other than Salich himself, in considering the guilt or innocence of the Defendant Gorin on those two counts, or either of them. I shall not go to the trouble nor take the time of the jury to specifically point out the exact statements made by Salich in these conversations. I feel sure that they are fresh in your memory. If not, they may be read to you upon your request through the Bailiff. The reason for this exclusion as to Counts 1 and 2 is that to entertain these statements would violate what is known as the hearsay rule of evidence.

The person who made the statement, that is, Salich, relayed second-hand by the witnesses on the stand, was not himself on the stand to be cross examined by counsel for the Defendants Gorin. However, please understand me, this hearsay rule does not apply to the testimony of the Defendant Salich, who later took the stand and whose testimony covered much of the same subject matter as was the subject matter of these statements. Salich was then subject to cross examination by counsel for the Defendants Gorin, and you may take into consideration his entire testimony, in determining not only his, Salich's, guilt or innocence, but also that of the Defendants Gorin on each of these two counts.

Please understand, also, that these statements so revealed in conversations to Government agents were permitted to be introduced, and objection thereto, whenever made on behalf of the two Defendants Gorin, was overruled. The reason for this ruling of the Court was that the substance of these conversations may properly be considered by you in determining the guilt or innocence of Salich [487] and of Mikhail and Natasha Gorin under the conspiracy count or Count 3 of the indictment. This will be more fully indicated to you later in these instructions.

The Court will now instruct you as to the law particularly applicable to Count 3, which is drawn under Section 34 of Title 50 of the United States Code. That section reads as follows:

"Conspiracy to violate preceding sections.

"If two or more persons conspire to violate the provisions of Sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished * * *"

You will note that the conspiracy charged in this indictment is alleged to be one in violation of Section 32 of the Act relating to disclosure of information. Count 3 does not and cannot charge any alleged conspiracy to obtain information in violation of Section 31 of the Act. The conspiracy here charged under Section 34 relates solely to an unlawful agreement to communicate, deliver or transmit information contrary to Section 32.

A conspiracy such as is here alleged is not an omnibus under which the prosecution can prove anything and everything. The charge or accusation is limited by the terms of the indictment. The indictment charges but one conspiracy, and no defendant can be convicted thereunder unless it can be shown beyond a reasonable doubt that he or she consciously became a member of that particular conspiracy. And when I use the word "he" in connection with the conspiracy, I shall also mean "she" wherever applicable. Further, the scope of the conspiracy must be gathered from the testimony and not from the averments of the indictment. The latter may limit the scope of the evidence, but cannot extend it.

A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful by criminal or [488] unlawful means. It is a partnership in criminal purposes. The gist of the crime is the confederation or combination of minds.

A conspiracy is constituted by an agreement; it is however, the result of the agreement and not the agreement itself. No formal agreement between the parties is essential to the formation of the conspiracy, for the agreement may be shown if there be concert of action, all the parties working together understandingly, with a single design for the accomplishments of a common purpose.

The purpose to be accomplished by the conspiracy may be either lawful or unlawful. If the purpose is lawful and is carried out by lawful means, then no offense is committed. If it is lawful and is carried out by criminal or unlawful means, then the statute is violated. On the other hand, if the purpose is unlawful and is carried out either by lawful or unlawful means, the statute is violated. The purpose of the conspiracy may be continuous, that is, it may contemplate commission of several offenses, or overt acts. The agreement forming the basis of the conspiracy may be a continuing one, and the conspiracy itself may be a continuing one, contemplating a whole series of unlawful acts, an unlawful course of conduct extending over a con-

siderable period of time. In this connection you are to distinguish between an unlawful conspiracy and an agreement which itself by statute is made a substantive offense. An example of this latter kind of offense would be the sale of liquor without proper revenue stamps, contrary to the statutes of the United States. Such a sale is in effect a contract between a buyer and a seller, and the contract or sale itself has been made a substantive offense. The law declares that there cannot be an unlawful conspiracy to make such an agreement where the only parties to the conspiracy are the buyer and the seller, since obviously this would make the same agreement or compact into two offenses.

But there may be a conspiracy where there are other persons [489] than the buyer and seller involved, as where A, B, and C conspire that A will buy liquor from B to give it to C. In such case the conspiracy is obviously much larger than the mere agreement of sale between A and B. It includes other parties and other acts than the mere compact or sale between A and B.

Furthermore, a conspiracy may be formed between A and B to effect a large number of sales. It may be a continuing conspiracy contemplating the formation of many separate unlawful contracts or sales, and the individual terms of these separate contracts or sales may be left to be determined at the time each sale is effected. The agreement of conspiracy, however, is the broad understanding between A and B looking to the performance of

many unlawful acts. In such a case each unlawful sale of liquor might be a substantive crime and the conspiracy itself might be a punishable crime as well.

The crime is completed when any one overt act to effect the object of the conspiracy is done by at least one of the conspirators. An overt act is something apart from the conspiracy itself, and is an act to effect the object of the conspiracy. It need be neither a criminal act, nor the very crime that is the object of the conspiracy. It must, however, accompany or follow the agreement, and must be done in furtherance of the object of it.

All of the conspirators need not join in the commission of an overt act, for, if one of the conspirators commits an overt act, it becomes the act of all the conspirators.

The conspiracy alone does not constitute the offense, as I have heretofore indicated. It needs the addition of the overt act; such act is something more therefore than evidence of a conspiracy. It constitutes the execution or part execution of the conspiracy and all incur guilt by it, or further complete their guilt by it, consummating a crime cognizable by our courts.

This indictment charges that certain overt acts were committed [490] by some one or other of these defendants and of the alleged joint conspirators, in pursuance of and in execution of and to effect the object of such wilful and unlawful conspiracy.

It is not necessary that all of the alleged overt acts be proved. It will be sufficient to complete the offense if the proof establishes one of the alleged overt acts performed by any one of the conspirators while the conspiracy was in progress, and after each of the alleged conspirators became a party to the unlawful agreement. Mere commission of any or all of the overt acts charged in the indictment will not be enough to warrant a verdict of guilty against any or all of the defendants on Count 3 unless you find there was an unlawful agreement, and that one or more of those acts was done by one or more of the conspirators, in furtherance of the conspiracy, and during its continuance.

The conspiracy charge in Count 3 must have as its basis an unlawful agreement to violate Section 32. Consequently the terms of the agreement must include a common purpose on the part of the conspirators to violate each of the requisite elements described to you as comprising the crime charged in Section 32. The conspiracy therefore must contemplate (briefly stated), (1) a disclosure, (2) to Russia or a citizen or representative thereof; (3) with the guilty intent heretofore explained to you; (4) of information relating to the national defense. I have purposely abbreviated those, as I had explained them fully to you before.

The Court has already instructed you as to these separate elements and assumes that you have them well in mind without the necessity of repeating

them at length here. What has been said by the Court, however, heretofore as to those four elements is to be considered by you as governing in your deliberations on this conspiracy count.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an express or [491] formal agreement for the unlawful venture or scheme, or that they should directly, by words or in writing, state between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, when an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy. The success or failure of the conspiracy is immaterial, but before the defendants may be found guilty of the charge it must appear beyond a reasonable doubt that a conspiracy was formed as alleged in the indictment, and that the defendants were active parties thereto.

Each party must be actuated by an intent to promote the common design. If persons pursue by their acts the same unlawful object, one per-

forming one act, and a second another act, all with a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect that object. Cooperation in some form must be shown. There must be intentional participation in the transaction with a view and purpose to further the common design. And if a person, understanding the unlawful character of a transaction, encourages, advises, or in any manner, with a purpose to forward the enterprise or scheme, assists in its prosecution, he becomes a conspirator. And so a new party, coming into a conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as to the acts done afterwards. Joint assent and joint participa- [492] tion in the conspiracy may be found, like any other fact, as an inference from facts proved.

Where the existence of a criminal conspiracy has been shown, every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted plan and in furtherance of the common object, is considered the act and declaration of all of the conspirators and is evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design, or by the parties abandoning the same, evidence of acts

or declarations thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declaration or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

A considerable part of the testimony before you covers statements made by the defendant Salich to agents for the Government, as I have heretofore explained in connection with Counts 1 and 2. This evidence is proper evidence in law and has been admitted for your consideration by this Court in connection with this conspiracy count and as to each and all of the alleged conspirators.

If you find that, as a matter of fact, there was a conspiracy between two or more of the defendants, then the statements of Salich or of either Mr. or Mrs. Gorin, made during the course of the conspiracy, are proper evidence against all of those who engaged in the conspiracy. The theory is that conspirators are, in effect, partners in crime; so that a statement or an admission or an acknowledgment by one of the conspirators, made during the existence of the conspiracy is binding upon and is to be considered by you as to all of the alleged conspirators. Conspiracy cases furnish an exception to the well known hearsay rule of evidence, which I have previously explained to you. Proof of a conspiracy may be by [493] circumstantial evidence, oftentimes by overt acts alone.

As heretofore indicated, we have the two kinds of evidence, the direct evidence and the indirect or circumstantial evidence.

I might repeat that definition of indirect evidence, or circumstantial evidence, as that evidence which tends to establish the fact in dispute by proving another and which, though true, does not of itself exclusively establish that fact but which affords an inference or presumption of its existence. Such evidence may consist of statements made by a defendant, plans laid for the commission of a crime—in short any acts, declarations or circumstances admitted in evidence tending to establish the offense charged, and to connect the defendant with its commission.

Where circumstantial evidence is relied upon to establish the conspiracy or any other essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and if it appears to you as reasonable men that, even though there is no direct evidence of the actual participation in the alleged offenses by the defendants, or either of them, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable doubt, show that the defendants, or some of them, were

parties to the conspiracy as charged, then you should make the deduction and find accordingly.

But you are not permitted to draw an inference from an inference, nor heap deduction onto deduction. You are permitted to draw inferences and deductions from facts, or what you find to be the facts. Beyond that, you are not permitted to go.

It is not necessary that it be shown that any person concerned in the alleged conspiracy profited by the things which he did, but if any of the defendants, with knowledge that the law was designed [494] to be violated in the particular manner charged in the indictment, aided in any way by affirmative action in the accomplishment of the unlawful act they would be guilty.

If you find that there was a conspiracy, and in the furtherance thereof an overt act took place, you are also to determine as to when the conspiracy commenced and for how long it continued.

The indictment charges that the conspiracy came into existence on a certain date and that it continued until the date of the finding of the indictment, and that date was January 11, 1939. However in this connection, while the indictment with respect to the conspiracy count charges that the conspiracy occurred even before the latter part of the year 1935, it is the position of the Government, as stated in open court, that in fact no contention is made that the conspiracy started prior to

some time during the latter part of the year 1937. It is for you to determine, from all of the evidence, if you find that, in fact, there was a conspiracy between the defendants, as to when it started and for how long it continued.

It is for you to say whether or not this conspiracy continued up to the time of the arrests of the various defendants, or any of them. The Defendant Salich was arrested on or about December 12, 1938. The Defendant Mr. Gorin was arrested on or about December 12, 1938. The Defendant Mrs. Gorin was arrested on or about January 11, 1939.

One who aids or abets the formation of a conspiracy or facilitates the execution of a conspiracy is a conspirator equally with those who are the principals in the conspiracy. Hence, if you find that any one of the defendants, knowing that a conspiracy was in existence did certain acts which would make it easier for the conspiracy to continue and be effected, that defendant, so facilitating the carrying out of the conspiracy, would be equally guilty as a conspirator.

The net result of this charge of the indictment is, so far as [495] the conspiracy count, Count 3, is concerned, that these defendants are said to have had an unlawful common purpose and design to transmit to the Union of Soviet Socialist Republics or a citizen or subject thereof certain information relating to the national defense of the United States and that this common design and purpose

was accompanied by an intention or reason to believe, upon the part of each of the defendants that the information so to be transmitted would be used either to the injury of the United States or to the advantage of a foreign government, namely, the Union of Soviet Socialist Republics.

You are to bear in mind that it is not necessary for the Government to prove here that any of these items of information actually reached the Union of Soviet Socialist Republics.

All that is required in proof is that one conspirator, after the conspiracy to do the unlawful thing is formed, does some act during the course of the conspiracy that is calculated to effect the object of the conspiracy. At that point all the conspirators are guilty, even though the ultimate purpose or objective of the conspiracy is never achieved.

In this trial both sides have introduced evidence having to do with the question as to whether a matter connected with the national defense be of a confidential, secret, or restricted nature. In reaching your verdict, you should bear in mind that under the statutes here involved you need not greatly concern yourselves as to whether information falling within the purview of this indictment and which has been introduced in evidence before you, was secret, confidential or even restricted, except possibly as an element to be considered by you in determining the intent of any defendant or defendants under the statutes here involved.

If, in fact, there was here a conspiracy to transmit to the Union of Soviet Socialist Republics or to one or more of its representatives, information relating to the national defense of the United [496] States, and if such transmittal was to be accomplished with the intention upon the part of the conspirators that the information was to be used either to the injury of the United States or to the advantage of a foreign nation, and if one or more persons who was at that time a party to the conspiracy committed an overt act during the course of the conspiracy for the purpose of effectuating the object of the conspiracy, each and every person who belonged to the conspiracy was guilty of a crime against the United States."

"Gentlemen of the jury, the Court instructed you this morning at some length as to the requirement that the information taken or disclosed, or which was subject of a conspiracy to disclose, relates to the national defense.

At request of counsel, the Court, now wishes to once again direct your attention to that portion of its charge.

The Court fears that it may inadvertently have conveyed an incorrect impression to you, that before you can reach a verdict of guilty you must find, as a fact, that all of the information contained in all of the reports specifically mentioned in the indictment related to the national defense. Such, of course, is not the law, nor was it the Court's intention to so instruct you, or did the Court, as a matter of fact, so instruct you.

If the Government has proved to you beyond a reasonable doubt that just one or more of these reports contained information relating to the national defense, as that phase has heretofore been defined to you, and that any or all of the defendants concerned with that information were guilty beyond a reasonable doubt as to all of the other elements composing any count, it will then be your duty to return a verdict of guilty to such defendant or defendants as to such count or counts.

You are instructed not to be prejudiced for or against the defendants, or any of them, or for or against the Government, because there were reports mentioned in the indictment by number which have not been introduced in evidence. You are to treat the matter as though those particular numbers did not appear in the indictment.

Gentlemen, in the instructions given you this morning there was a reference to the fact that a subpoena duces tecum was issued on behalf of one of the defendants, and a request was made on behalf of the Government for certain files from the office of the Naval Intelligence Service. You are now instructed, at the request of all counsel, to entirely ignore and dismiss from your minds that instruction. Under no circumstances did the Court intend to infer that there were any documents in the files of the Naval Intelligence not produced in court, which might in any way affect the subject matter of this proceeding or be or not be connected with the national defense.

Whether or not there are any such documents, the Court has no knowledge, and there is nothing before the Court to prove or disprove that fact.

You are instructed to disregard in your deliberations the fact that there has been no production in this court by either the Government or any of the defendants of any other reports of the United States Naval Intelligence Service than those mentioned in the indictment.

Under the Federal practice, it now becomes the obligation of counsel to object to and take exception to any of the instructions which the Court has given to you, and to make any suggestions that such counsel may have for additional instructions."

Mr. Stone: May it please the Court, I except to the definition of national defense as contained in your Honor's instructions this morning; and except further to the failure of the [498] Court to give Instruction No. 10 requested on behalf of the Defendant Hafis Salic.

The Court: The exception may be made a matter of record.

Mr. Pacht: If the Court please, I desire, first, to except to the instruction which your Honor just gave to the jury, that it is sufficient to convict if any one or more of the reports offered in evidence deal with the national defense.

The Court: That wasn't the instruction. You will have to be more specific in order to make the exception any good. Taken at this late date, it would be meaningless. The Court connected it up

with the entire instruction, and stated that as to those reports it was not necessary that all of those reports deal with the national defense; that one or more of the reports could deal with the national defense, and that the jury in their deliberations, tying it in with the entire instructions, should so consider it.

Now, if your point—if it is your position that all of the instructions had to do with the national defense in order that the defendants should be guilty, you must be specific. If that is your point, that may be registered.

Mr. Pacht: My point is, if the Court please, under the statute, the jury cannot determine whether any of these reports deal with the national defense.

The Court: That is an entirely different question.

Mr. Pacht: And that none of them do, as a matter of law, deal with the national defense.

The Court: That is a different point.

Your point there is that the jury has no privilege in determining whether or no any of these reports have to do with the national defense, that that is a matter for the Court and not [499] for the jury, as a matter of law.

Mr. Pacht: Yes.

The Court: Yes. That exception may be allowed.

Mr. Pacht: We except further to the Court's instruction this morning that the statement or statements given by the Defendant Salich to the

Agent of the Federal Bureau of Investigation is binding upon either the Defendant Natasha Gorin or the Defendant Mikhail Gorin, upon the ground that the conspiracy, according to the evidence introduced in court here, had prior to that time terminated.

The Court: That exception may be allowed.

Mr. Pacht: We except to the Court's charge given this morning that Salich's belief, honestly entertained, as to his view of the law that the information which he gave to Gorin was not injurious to the United States or of advantage to a foreign power, is of no avail to him as a defense in this case, but that he may be convicted nevertheless. We except to that charge. I am merely referring to the subject matter; I am not pretending to give the exact phraseology.

The Court: You except to the form of the instruction?

Mr. Pacht: Yes.

The Court: Very well. The exception will be entertained.

Mr. Pacht: We except to the charge of the Court given this morning that it is sufficient if the defendants had reason to believe that the information was to be given to the U. S. S. R., and [500] we ask the Court to charge before this jury may convict the defendants, or any of them, they must find that the defendants had a specific intent to injure the United States, or a specific intent that the transmittal or obtaining of the information was to be of advantage to the U. S. S. R.

The Court: The point there being that if you wish an instruction, it must be a specific intent?

Mr. Pacht: Yes, your Honor.

The Court: The reason to believe, as defined by the Court, is not sufficient?

Mr. Pacht: Yes, your Honor.

The Court: The exception will be entertained, and the request denied.

Mr. Pacht: I ask your Honor to instruct the jury—strike that. In addition to the instructions which we have asked the Court to give, and which have been filed already, and specifically at this time we ask the Court to give Instruction No. G-29, to the effect that, as defined in the statute in question in this case, the national defense relates solely and is limited to the places and things designated in Subdivision (a) of Section 31, Title 50 of the United States Code, to-wit, any vessel, aircraft, and so forth.

The Court: That exception will be noted, and the requested instruction declined.

Mr. Pacht: We ask the Court to give the jury Instruction No. G-37, heretofore submitted to the Court, in substance, to this effect: that unless the jury find beyond a reasonable doubt from the evidence in the case that the defendants Gorin took, [501] copied, made, obtained or attempted to induce another to make a copy, sketch, and so forth—

The Court (Interrupting): I am familiar with that.

Mr. Pacht: G-37?

The Court: I have it before me.

Mr. Pacht: With the intent that the same be to the injury of the United States or of advantage to a foreign power, that they are not guilty of any offense, and the jury should acquit them.

The Court: The request will be denied; exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as more fully set forth in our requested instruction heretofore submitted, No. G-39, that the evidence in this case discloses that many of the reports enumerated in the indictment deal with the arrival and departure of Japanese commercial operators, naval officers and Japanese businessmen, and other reports that deal with activities of Japanese fishing boats in Southern California, and still others that deal with the political and economic opinions of various and sundry persons, and still others deal with the conduct of certain Japanese; and so forth.

The Court: You mean the same form as submitted?

Mr. Pacht: Exactly.

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as submitted in Instruction No. BB, heretofore submitted to the Court.

The Court: The request will be denied; exception allowed.

Mr. Pacht: That is as to our requested instruction BB?

The Court: Yes. [502]

Mr. Pacht: Your Honor, I specifically except to your Honor's instruction to the jury concerning the subject matter of national defense, the definition of the term national defense; and I further except to it upon the ground that it violates Sections 5 and 6 of the United States Constitution—or, rather, the amendments to the Constitution—and that it submits for the determination of the jury and the interpretation of the jury, a law or an enlargement of it.

The Court: The exception will be permitted.

Mr. Pacht: And, in that connection, we specifically request the Court to give the instruction relating to national defense and the definition of it, as set forth in our requested Instructions G-29, G-37, G-39, CC — which I haven't yet called to your Honor's attention.

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask the Court to give the jury Instruction No. GG, requested by us, in which there is set forth certain numbered reports. They do not relate to the national defense.

The Court: The request will be received, denied, and an exception allowed.

Mr. Pacht: I ask the Court to instruct the jury as set forth in our requested Instruction FF-1.

The Court: The request will be denied, and an exception allowed. [503]

Mr. Pacht: I ask your Honor to instruct the jury as heretofore requested in our submitted In-

struction No. FF, which I will, for the present purpose, designate as FF-2.

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as per the instruction submitted by us numbered AA, concerning the subject of conspiracy, and that it refers to the documents and papers and objects referred to in Subdivision (a) of Section 31.

The Court: The offer will be declined, and an exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as per the instruction heretofore submitted to the Court marked K.

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask the Court to instruct the jury in accordance with the instruction heretofore submitted to the Court marked T, defining the terms "injury" and "advantage."

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask the Court to instruct the jury as per the submitted instruction G-41.

The Court: It will be declined; exception allowed. [504]

Mr. Pacht: I ask the Court to instruct the jury as requested by us in instruction heretofore submitted to the Court marked G-19, concerning the defendants being entitled to the individual opinion of each juror.

The Court: That will be declined. Exception allowed.

Mr. Pacht: I take it, of course, as your Honor has indicated, that my failure to state at large and in detail the subject matter of each requested instruction was not necessary, and that we may have the exception nevertheless?

The Court: As the Court has those instructions in front of him, it was unnecessary for you to go into detail, and you have the exception just the same.

Mr. Pacht: Now, may I ask for another matter, your Honor?

In making the request for these specific instructions, which I have just made, and which your Honor has passed upon, I do not intend, and I do not mean, to waive our right to have each and all of the instructions which have heretofore been submitted to the Court and which have not been given, and that we may have an exception to each one of those that have not been given.

The Court: Well, I can't allow you that in those general terms. They are all filed, and they have been requested, and I don't think you need an exception as to those.

The only thing I can give you an exception to is as to particular matters that you bring up specifically and bring to the Court's attention.

Mr. Pacht: I didn't want to be understood, by making these specific requests, that I waived any of the others which have heretofore been submitted.

The Court: You are protecting your position so far as you can. [505]

Mr. Stone: May I make one more exception to your charge on intent as given this morning, and to your Honor's failure to give instruction No. 12, requested in behalf of the Defendant Hafis Salich?

The Court: You may have the exception.

Whereupon the jury retired to deliberate upon their verdict.

Thereafter, at 4:50 o'clock p. m., on March 10, 1939, the jury returned into said court with a verdict as follows:

We, the jury in the above-entitled case, find the defendant, Hafis Salich, guilty as charged in the first count of the indictment; guilty as charged in the second count of the indictment; guilty as charged in the third count of the indictment.

We find the defendant, Mikhail Nicholas Gorin, guilty as charged in the first count of the indictment; guilty as charged in the second count of the indictment; guilty as charged in the third count of the indictment.

We find the defendant, Natasha Gorin, not guilty as charged in the first count of the indictment; not guilty as charged in the second count of the indictment; not guilty as charged in the third count of the indictment.

FRED M. COX,

Foreman of the jury.

Los Angeles, California; March 10, 1939"

That thereafter the defendant Gorin filed and presented due and timely motions in arrest of judgment and for a new trial as follows:

[Title of District Court and Cause.]

"MOTION OF DEFENDANT MIKHAIL NICHOLAS GORIN IN ARREST OF JUDGMENT

Now comes the defendant Mikhail Nicholas Gorin and moves said court that the verdict of guilty returned against him by jury in this court upon the 10th day of March, 1939, be arrested as to each count of said indictment upon which said defendant was found guilty, and that no judgment and sentence be imposed thereon for the following reasons:

1. That the indictment upon which said defendant was tried and convicted does not, and neither does any count thereof, state facts sufficient to constitute a crime against the United States.

2. That Count One of said indictment does not state facts sufficient to constitute a crime against the United States.

3. That Count Two of said indictment does not state facts sufficient to constitute a crime against the United States.

4. That Count Three of said indictment does not state facts sufficient to constitute a crime against the United States.

Dated: March 13, 1939.

PACHT, PELTON, WARNE
& BLACK,

By ISAAC PACHT,

By CLORE WARNE,

Attorneys for defendant

Mikhail Nicholas Gorin."

That thereafter, to wit on the 20th day of March 1939, said motion came on for hearing, and was by the Court denied and an Exception allowed.

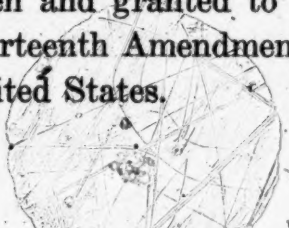
[Title of District Court and Cause.] [507]

"MOTION OF DEFENDANT MIKHAIL NICHOLAS GORIN FOR A NEW TRIAL

Comes now the defendant, Mikhail Nicholas Gorin, and moves the court to grant him a new trial in the above entitled action for the following reasons, to wit:

1. Because the verdict of the jury is contrary to the law and the evidence.

2. That the court erred in its charge to the jury, in that it presented to the jury a question of law for its determination, and left to the jury the construction and interpretation of a criminal statute, all in violation of law and the rights of said defendant given and granted to him by the Fifth Sixth and Fourteenth Amendments of the Constitution of the United States.



Dated: March 13, 1939.

PACHT, PELTON, WARNE
& BLACK

By ISAAC PACHT,

By CLORE WARNE,

Attorneys for Defendant

Mikhail Nicholas Gorin."

That said motion was made and presented after the denial of said motion in arrest of judgment, and was by the Court denied and an exception allowed. [508]

That thereafter the defendant Salich filed and presented Motion for Judgment Notwithstanding the Verdict or for a New Trial, as follows:

[Title of District Court and Cause.]

"MOTION FOR JUDGMENT NOTWITH-
STANDING THE VERDICT OR FOR A
NEW TRIAL

Defendant Hafis Salich respectfully moves this Honorable Court for judgment notwithstanding the verdict, or in the alternative, for a new trial, upon each and every count of the indictment and upon the following counts and each of them:

First Count

(1) The First Count of the indictment fails to state facts sufficient to constitute a penal offense

by the defendant, Hafis Salich, against the United States.

(2) The evidence introduced on behalf of the Government on the First Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.

(3) The verdict is against the weight of the evidence.

(4) The evidence introduced by the Government fails to show that the information obtained concerns or affects the national defense.

(5) The evidence fails to show that the defendant Hafis Salich obtained the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

(6) The evidence fails to show that the defendant Hafis Salich obtained the said information with the purpose of obtaining information affecting the national defense.

(7) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.

(8) The Court erred in its definition of the term "national defense" in the instructions given to the jury. [509]

(9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.

(10) The Court erred in admitting in evidence Government's Exhibit 5a.

(11) The Court erred in admitting in evidence Government's Exhibit 5b.

(12) The Court erred in admitting in evidence Government's Exhibit 5c.

(13) The Court erred in admitting in evidence Government's Exhibit 5d.

(14) The Court erred in admitting in evidence Government's Exhibit 5e.

(15) The Court erred in admitting in evidence Government's Exhibit 5f.

(16) The Court erred in admitting in evidence Government's Exhibit 5g.

(17) The Court erred in admitting in evidence Government's Exhibit 5h.

(18) The Court erred in admitting in evidence Government's Exhibit 5i.

(19) The Court erred in admitting in evidence Government's Exhibit 5j.

(20) The Court erred in admitting in evidence Government's Exhibit 5k.

(21) The Court erred in admitting in evidence Government's Exhibit 5l.

(22) The Court erred in admitting in evidence Government's Exhibit 5m.

(23) The Court erred in admitting in evidence Government's Exhibit 6a.

(24) The Court erred in admitting in evidence Government's Exhibit 6b. [510]

(25) The Court erred in admitting in evidence Government's Exhibit 6c.

(26) The Court erred in admitting in evidence Government's Exhibit 6d.

(27) The Court erred in admitting in evidence Government's Exhibit 6e.

(28) The Court erred in admitting in evidence Government's Exhibit 6f.

(29) The Court erred in admitting in evidence Government's Exhibit 6g.

(30) The Court erred in admitting in evidence Government's Exhibit 6h.

(31) The Court erred in admitting in evidence Government's Exhibit 6i.

(32) The Court erred in admitting in evidence Government's Exhibit 6j.

(33) The Court erred in admitting in evidence Government's Exhibit 6k.

(34) The Court erred in admitting in evidence Government's Exhibit 6l.

(35) The Court erred in admitting in evidence Government's Exhibit 6m.

(36) The Court erred in admitting in evidence Government's Exhibit 6n.

(37) The Court erred in admitting in evidence Government's Exhibit 6o.

(38) The Court erred in admitting in evidence Government's Exhibit 6p.

(39) The Court erred in admitting in evidence Government's Exhibit 6q.

(40) The Court erred in admitting in evidence Government's Exhibit 6r. [511]

- (41) The Court erred in admitting in evidence Government's Exhibit 6s.
- (42) The Court erred in admitting in evidence Government's Exhibit 6t.
- (43) The Court erred in admitting in evidence Government's Exhibit 6u.
- (44) The Court erred in admitting in evidence Government's Exhibit 6v.
- (45) The Court erred in admitting in evidence Government's Exhibit 6w.
- (46) The Court erred in admitting in evidence Government's Exhibit 6x.
- (47) The Court erred in admitting in evidence Government's Exhibit 6y.
- (48) The Court erred in admitting in evidence Government's Exhibit 6z.
- (49) The Court erred in admitting in evidence Government's Exhibit 6aa.
- (50) The Court erred in admitting in evidence Government's Exhibit 6bb.
- (51) The Court erred in admitting in evidence Government's Exhibit 6cc.
- (52) The Court erred in admitting in evidence Government's Exhibit 6dd.
- (53) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich.
- (54) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.
- (55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.

(56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri De B. [512] Claiborne.

(57) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

Second Count

(1) The Second Count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.

(2) The evidence introduced on behalf of the Government on The Second Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.

(3) The verdict is against the weight of the evidence.

(4) The evidence introduced by the Government fails to show that the information communicated and transmitted concerns or affects the national defense.

(5) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

(6) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with the purpose of communi-

cating and transmitting information affecting the national defense.

(7) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.

(8) The Court erred in its definition of the term "national defense" in the instructions given to the jury.

(9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.

(10) The Court erred in admitting in evidence Government's Exhibit 5a. [513]

(11) The Court erred in admitting in evidence Government's Exhibit 5b.

(12) The Court erred in admitting in evidence Government's Exhibit 5c.

(13) The Court erred in admitting in evidence Government's Exhibit 5d.

(14) The Court erred in admitting in evidence Government's Exhibit 5e.

(15) The Court erred in admitting in evidence Government's Exhibit 5f.

(16) The Court erred in admitting in evidence Government's Exhibit 5g.

(17) The Court erred in admitting in evidence Government's Exhibit 5h.

(18) The Court erred in admitting in evidence Government's Exhibit 5i.

(19) The Court erred in admitting in evidence Government's Exhibit 5j.

(20) The Court erred in admitting in evidence Government's Exhibit 5k.

(21) The Court erred in admitting in evidence Government's Exhibit 5l.

(22) The Court erred in admitting in evidence Government's Exhibit 5m.

(23) The Court erred in admitting in evidence Government's Exhibit 6a.

(24) The Court erred in admitting in evidence Government's Exhibit 6b.

(25) The Court erred in admitting in evidence Government's Exhibit 6c.

(26) The Court erred in admitting in evidence Government's Exhibit 6d. [514]

(27) The Court erred in admitting in evidence Government's Exhibit 6e.

(28) The Court erred in admitting in evidence Government's Exhibit 6f.

(29) The Court erred in admitting in evidence Government's Exhibit 6g.

(30) The Court erred in admitting in evidence Government's Exhibit 6h.

(31) The Court erred in admitting in evidence Government's Exhibit 6i.

(32) The Court erred in admitting in evidence Government's Exhibit 6j.

(33) The Court erred in admitting in evidence Government's Exhibit 6k.

(34) The Court erred in admitting in evidence Government's Exhibit 6l.

(35) The Court erred in admitting in evidence Government's Exhibit 6m.

(36) The Court erred in admitting in evidence Government's Exhibit 6n.

(37) The Court erred in admitting in evidence Government's Exhibit 6o.

(38) The Court erred in admitting in evidence Government's Exhibit 6p.

(39) The Court erred in admitting in evidence Government's Exhibit 6q.

(40) The Court erred in admitting in evidence Government's Exhibit 6r.

(41) The Court erred in admitting in evidence Government's Exhibit 6s.

(42) The Court erred in admitting in evidence Government's Exhibit 6t. [515]

(43) The Court erred in admitting in evidence Government's Exhibit 6u.

(44) The Court erred in admitting in evidence Government's Exhibit 6v.

(45) The Court erred in admitting in evidence Government's Exhibit 6w.

(46) The Court erred in admitting in evidence Government's Exhibit 6x.

(47) The Court erred in admitting in evidence Government's Exhibit 6y.

(48) The Court erred in admitting in evidence Government's Exhibit 6z.

(49) The Court erred in admitting in evidence Government's Exhibit 6aa.

(50) The Court erred in admitting in evidence Government's Exhibit 6bb.

(51) The Court erred in admitting in evidence Government's Exhibit 6cc.

(52) The Court erred in admitting in evidence Government's Exhibit 6dd.

(53) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich.

(54) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.

(55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.

(56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri De B. Claiborne.

(57) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury. [516]

• Third Count

(1) The Third Count of the indictment failed to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.

(2) The evidence introduced on behalf of the Government on the Third count of the indictment

is insufficient to support a conviction of the defendant Hafis Salich.

(3) The verdict is against the weight of the evidence.

(4) The information introduced by the Government fails to show that the information conspired to be transmitted concerns or affects the national defense.

(5) The evidence fails to show that the defendant Hafis Salich conspired to transmit the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

(6) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.

(7) The Court erred in its definition of the term "national defense" in the instructions given to the jury.

(8) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.

(9) The Court erred in admitting in evidence Government's Exhibit 5a.

(10) The Court erred in admitting in evidence Government's Exhibit 5b.

(11) The Court erred in admitting in evidence Government's Exhibit 5c.

(12) The Court erred in admitting in evidence Government's Exhibit 5d.

(13) The Court erred in admitting in evidence Government's Exhibit 5e.

(14) The Court erred in admitting in evidence Government's [517] Exhibit 5f.

(15) The Court erred in admitting in evidence Government's Exhibit 5g.

(16) The Court erred in admitting in evidence Government's Exhibit 5h.

(17) The Court erred in admitting in evidence Government's Exhibit 5i.

(18) The Court erred in admitting in evidence Government's Exhibit 5j.

(19) The Court erred in admitting in evidence Government's Exhibit 5k.

(20) The Court erred in admitting in evidence Government's Exhibit 5l.

(21) The Court erred in admitting in evidence Government's Exhibit 5m.

(22) The Court erred in admitting in evidence Government's Exhibit 6a.

(23) The Court erred in admitting in evidence Government's Exhibit 6b.

(24) The Court erred in admitting in evidence Government's Exhibit 6c.

(25) The Court erred in admitting in evidence Government's Exhibit 6d.

(26) The Court erred in admitting in evidence Government's Exhibit 6e.

(27) The Court erred in admitting in evidence Government's Exhibit 6f.

(28) The Court erred in admitting in evidence Government's Exhibit 6g.

(29) The Court erred in admitting in evidence Government's Exhibit 6h.

(30) The Court erred in admitting in evidence Government's [518] Exhibit 6i.

(31) The Court erred in admitting in evidence Government's Exhibit 6j.

(32) The Court erred in admitting in evidence Government's Exhibit 6k.

(33) The Court erred in admitting in evidence Government's Exhibit 6l.

(34) The Court erred in admitting in evidence Government's Exhibit 6m.

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(40) The Court erred in admitting in evidence Government's Exhibit 6s.

(41) The Court erred in admitting in evidence Government's Exhibit 6t.

(42) The Court erred in admitting in evidence Government's Exhibit 6u.

(43) The Court erred in admitting in evidence Government's Exhibit 6v.

(44) The Court erred in admitting in evidence Government's Exhibit 6w.

(45) The Court erred in admitting in evidence Government's Exhibit 6x.

(46) The Court erred in admitting in evidence Government's [519] Exhibit 6y.

(47) The Court erred in admitting in evidence Government's Exhibit 6z.

(48) The Court erred in admitting in evidence Government's Exhibit 6aa.

(49) The Court erred in admitting in evidence Government's Exhibit 6bb.

(50) The Court erred in admitting in evidence Government's Exhibit 6cc.

(51) The Court erred in admitting in evidence Government's Exhibit 6dd.

(52) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich.

(53) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.

(54) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.

(55) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri De B. Claiborne.

(56) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

WILLARD J. STONE, Jr.

Attorney for Hafis Salich"

That thereafter, towit, on the 20th day of March, 1939, said Motion came on for hearing and was by the Court denied and an exception allowed. [520]

Thereafter sentence and judgment of the Court was imposed, rendered and entered, and thereafter, notices of appeal were filed on behalf of each of said defendants Mikhail Nicholas Gorin and Hafis Salich.

Thereafter the following orders were duly made and entered by the Court:

[Title of District Court and Cause.]

**"ORDER EXTENDING TIME WITHIN
WHICH TO PREPARE, SETTLE AND
FILE BILL OF EXCEPTIONS, ETC.**

It appearing that the United States of America, through its counsel, Ben Harrison, United States Attorney, and Norman Neukom, Assistant United States Attorney, and the appellant, Mikhail Nicholas Gorin, through his counsel, Pacht, Pelton, Warne & Black, Isaac Pacht and Clore Warne, have consented to the making of the within Order, and good cause appearing to the Court for the granting of the same:

It is ordered that the appellant, Mikhail Nicholas Gorin, have up to and including the 12th day of June, 1939 within which to prepare and serve his Assignment of Errors and within which to prepare, serve and file his proposed Bill of Exceptions; that the appellee, United States of America, have up to and including the 24th day of June, 1939 within which to prepare and serve any proposed amendments in the proposed Bill of Exceptions; and that the appellant, Mikhail Nicholas Gorin, presume to be settled by the United States District Court for the Southern District of California, and filed, the Bill of Exceptions on or before the 30th day of June, 1939.

Dated this 3rd day of April, 1939.

RALPH E. JENNY

Judge.

[Title of District Court and Cause.]

**"STIPULATION RE OMISSION IN PRINTED
TRANSCRIPT OF CAPTIONS.**

It is hereby stipulated by and between counsel for the respective parties hereto that, in the preparation of the printed transcript of the record on appeal in this proceeding, the captions at the top of all pleadings indicating the name of the court, name of the cause and parties and docket number, may be omitted.

Dated: April 3rd, 1939.

BENJAMIN HARRISON

United States Attorney

By **NORMAN W. NEUKOM**

Assistant United States Attorney

Attorneys for United States

of America

**PACHT, PELTON, WARNE &
BLACK**

By **CLORE WARNE**

Attorneys for appellant, Mikhail

Nicholas Gorin

It is so ordered.

Dated: April 3rd, 1939.

RALPH E. JENNY

Judge [521]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the United States of America by Ben Harrison, United States Attorney, and Norman W. Neukom, Assistant United States Attorney, and Mikhail Nicholas Gorin by Pacht, Pelton, Warne & Black, Isaac Pacht and Clore Warne, his attorneys, and Hafis Salich by Willard J. Stone, Jr., his attorney, as follows:

Whereas Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin were indicted jointly for the

violation of Title 50 United States Code, Sections 31, 32, and 34, and were placed on trial jointly being tried at the same time, before the same court; and the same jury,

And whereas the defendants Hafis Salich and Mikhail Nicholas Gorin were each convicted of the said charges and each was sentenced on the 20th day of March, 1939 to serve a stated term of imprisonment and to pay a fine in punishment of the above offenses,

And whereas the defendants Hafis Salich and Mikhail Nicholas Gorin and each of them, through their respective counsel, served and filed a Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above mentioned convictions and sentences,

And whereas the said appeals of the said defendants Hafis Salich and Mikhail Nicholas Gorin raise many questions which are identical, and the questions to be raised on the two appeals are in all respects similar and may be conveniently determined upon the same record, transcript, and bill of exceptions,

Now therefore, it is hereby agreed as follows:

The appeal of Hafis Salich and of Mikhail Nicholas Gorin may and shall be made, prosecuted and decided on a single and consolidated record, transcript, and bill of exceptions which said consolidated record, transcript, and bill of exceptions may and shall be used on both appeals and both appeals

shall be heard thereon in the same manner as if records had been filed by the appellant in both cases. Said consolidated record, transcript, and bill of exceptions may present and preserve all assignments of error and exceptions to be taken or preserved or presented by or on behalf of either appellant.

BEN HARRISON

United States Attorney

By **NORMAN W. NEUKOM**

Assistant United States

Attorney

PACHT, PELTON, WARNE &

BLACK

By **CLORE WARNE**

Attorneys for Mikhail Nicholas Gorin

WILLARD J. STONE, JR.

Attorney for Hafis Salich

The above stipulation is approved and it is ordered that the appeal of Hafis Salich and of Mikhail Nicholas Gorin may and shall be made, prosecuted, and decided on a single and consolidated record, transcript, and bill of exceptions which said consolidated record, transcript, and bill of exceptions may and shall be used on both appeals and both appeals shall be heard thereon in the same manner as if records had been filed by the appellant in both cases. Said consolidated record, transcript, and bill of exceptions may present and preserve all

assignments of error and exceptions to be taken or preserved or presented, by or on behalf of either appellant.

RALPH E. JENNEY

Judge of United States District Court

CURTIS D. WILBUR

Judge of United States Circuit Court
of Appeals [522]

[Title of District Court and Cause.]

**ORDER EXTENDING TIME WITHIN
WHICH TO PREPARE, SERVE AND FILE
TRANSCRIPT, ASSIGNMENT OF ER-
RORS, AND BILL OF EXCEPTIONS.**

It appearing that the United States of America through its counsel, Ben Harrison, United States Attorney, and Norman W. Neukom, Assistant United States Attorney, and the appellant Hafis Salich through his counsel, Willard J. Stone, Jr., have consented to the making of the within order and good cause appearing to the Court for the granting of the same, it is ordered that the appellant Hafis Salich have up to and including the 12th day of June, 1939 within which to prepare, serve and file his proposed transcript and bill of exceptions. That the appellee United States of America have up to and including the 24th day of June, 1939 within which to prepare and serve

any proposed amendments to the proposed bill of exceptions, and that the appellant Hafis Salich procure to be settled by the United States District Court for the Southern District of California, Central Division, and file the said bill of exceptions on or before the 30th day of June, 1939.

Dated: April 11th, 1939.

RALPH E. JENNEY

Judge of the United States District Court

The above order is approved.

BEN HARRISON

United States Attorney.

By **NORMAN W. NEUKOM**

Assistant United States Attorney. [523]

That the article in Ken Magazine, marked as

DEFENDANTS' EXHIBIT "A"

for identification

offered in evidence by defendants and which offer was rejected by the Court upon the objection of the Government, and exception allowed, all as shown hereinbefore, appears on Page 40, Volume 1, No. 1, Ken Magazine, of the issue of April 7, 1938, and is in words and figures as follows (omitting photographs and drawings also appearing as a part of the said article):

"EXPOSING THE PERIL AT PANAMA"

Elaborately preparing Something, secret agents of the Axis infest the Canal Zone and adjacent republics. American authorities are here directed, by name and address, to a Jap shirt shop that sells no shirts, a barefoot fisherman who was piped aboard Jap battleships like a high-ranking officer, a down-at-heel barber before whom the Japanese Consul daren't be seated, an Italian stamp-collector who arranges "sales" of fascist arms, an employer who puts up his Jap "laborers" at first-class hotels, the Nazi manager of a U. S. agency who meets by night with these Jap "barbers and fishermen".

There is a little shirt shop in Colon, Panama, on Calle 10a between Avenida Herrera and Avenida Amador Guerrero whose red and black painted shingle announces that Lola Osawa is the proprietor.

Lola is an attractive and sensually exciting woman in her early thirties and you have to look twice in the dim lighted Atlantic Nite Club or the Moulin Rouge which she frequents to notice that she is Japanese, for her graceful body is always dressed in the height of Western fashion. When you do meet her you find that her scholarly dark eyes behind the octagonal shaped lenses of

her glasses are soft and kindly with an intangible something of suppressed amusement in [524] them as if she were always laughing deep within herself.

Across the street from her shirt shop, where the red light district begins, is a bar frequented by natives, soldiers and sailors. Tourists seldom go there for it is a bit off the beaten track. In front of the bar is a West Indian boy with a tripod and camera with a telescopic lens. He never photographs natives, and wandering tourists pass him by but he is there every day from eight in the morning until dark. His job is to photograph everyone who shows an undue interest in the little shirt shop and particularly anyone who enters or leaves it. Usually he snaps your picture from across the street but if he misses you he darts across the street and waits for you to come out to take another shot.

I watched him take my picture, while my photographer took his, as I entered the store. It was almost high noon and Lola was not yet up. The business upon which she and her husband are supposed to depend for a living was in the hands of two giggling young Panamanian girls who sat idly at two ancient Singer sewing machines.

"You got shirts?" I asked.

Without troubling to rise and wait on me, they pointed to a glass case stretched across the room and barring quick entrance to the shop proper.

I examined the assortment in the case, counting a total of twenty-eight shirts.

"I don't especially like these", I said. "Got any others?"

"No more", one of them giggled.

"Where's Lola?"

"Upstairs", the other said, motioning with her thumb to the ceiling.

"Looks like you're doing a rushing business, eh?"

They looked puzzled and I explained: "Busy, eh?"

"Busy? No. No busy."

There is little work for them and neither they nor Lola care a whoop whether or not you buy any of the shop's total stock [525] of twenty-eight shirts. Lola herself pays little attention to the business from which she obviously cannot earn enough to pay the rent, let alone keep herself and her husband, pay two girls and a lookout.

The little shirt shop is a cubby hole about nine feet square, its wooden walls painted a pale, washed out blue. A deck which cuts the store's height in half, forms a little balcony which is covered by a green and yellow print curtain stretched across it. To the right, casually covered by another print curtain, is a red painted ladder by which the deck is reached. On the deck at the extreme left, where it is not perceptible from the street or shop, is another tiny ladder which reaches to the ceiling.

If you stand on the ladder and press against the ceiling directly over it, a well oiled trap door will open soundlessly and lead you into Lola's bedroom above the shop. In front of the window with the blue curtain is a worn bed, the hard mattress neatly covered with a counterpane. At the head of the mattress where Lola rests her charming head, you will notice a mended tear in the mattress.

If the American military and naval intelligence officers will rip this thread and stick their hands into the mattress they will find photographs of extraordinary secret military and naval importance. I saw four of them. The charming little seamstress, Lola Osawa, is one of the most capable of the Japanese espionage agents operating in the Canal Zone area.

Lola Osawa is not her right name. She is Chiyo Morasawa who arrived at Balboa from Yokohama on the Japanese steamship Anyo Maru on May 24, 1929, and promptly disappeared for almost a year. When she appeared again she was Lola Osawa, seamstress. She has been an active Japanese secret agent for almost nine years, specializing in getting photographs of military importance. Her husband, who entered Panama without a Panamanian visa on his passport, is a [526] reserve officer in the Japanese Navy. He lives with Lola in the room above the shop, never does any work though he is supposed to be a merchant, and is always wandering around with a camera. Occasionally he van-

ishes to Japan. His last trip was in 1935. At that time he stayed there over a year.

II.

The ten-mile-wide strip of 46 miles of land, lakes and Canal which the Republic of Panama leased to the United States "in perpetuity" is America's life line both commercially and in time of war. To defend the Canal, the army, navy and air corps have woven a net work of secret fortifications, laid mines and placed anti-aircraft guns, and foreign spies and international adventurers play a sleepless game to learn these military and naval secrets. The Isthmus is a center of intrigue, plotting, conniving, conspiracy and espionage, with the intelligence departments of foreign governments bidding high for information, since capture or disablement of the Canal by an enemy means that American ships would have to go around the Horn to get from one coast to another, a delay which in time of war might easily prove the difference between victory and defeat.

Hollywood in its maddest moments would dismiss as too incredible some of the activities of the secret agents in the Panama area. Nazi and Japanese secret agents co-ordinate their work around the Canal. Fishing boats flying the American flag, but manned by Japanese, take soundings of the waters around the Canal searching for the locations of the mines. These and many others too incredible for the movies have happened and are happening in the

Panama Canal Zone area which is now flanked by Japan, Germany and Italy, all signatories of the "anti-communist pact" which is now generally recognized as being a military agreement.

With modern means of communication and transportation any region within 500 or 1000 miles of the objective is considered in the "sensitive zone," especially if it is of great strategic importance in the event of war. Hence, the espionage activities embrace Central and South American Republics which may have to be used by an enemy as a base of operations. Costa Rica, north of the Canal and Colombia south of it, are beehives of secret Japanese, Nazi and Italian activities. Special efforts are made to buy or lease land "for colonization" but the land chosen is such that it can be turned into an air base almost over night.

In time of war all sorts of information is of vital importance which has little to do with military or naval secrets: A potential enemy planning to land an expeditionary force must know the coast line, the depths of the waters around it, chart the hidden rocks and submerged ledges, the topography of the land, the systems and methods of communication, the ability of the country to feed an expeditionary force as well as cultivate the friendship of the government to get co-operation.

For decades Japanese in the Canal Zone area have been photographing everything in sight, not only around the Canal, but for hundreds of miles

north and south of it, and its fishing fleet has been taking soundings of the waters along the coast and its harbors. Since the Japanese-Nazi "anti-Communist pact," Nazi agents have been sent to German colonies in Central and South America to organize them, carry on propaganda and co-operate secretly with Japanese agents. Italy, which had been only mildly interested in Central America, has become extremely active in cultivating the friendship of Central American republics since she joined the Tokyo-Berlin tie-up. Let me illustrate:

The known vulnerability of the Canal caused the United States to plan another through Nicaragua. The friendship of the Nicaraguan government and people is of great importance not only from a commercial standpoint but as a war measure. Efforts to gain Nicaragua's friendship were started by Italy when she joined the Japanese-Nazi line-up. First Italy offered scholarships with all [528] expenses paid, for Nicaraguan students to study fascism in Italy. Then—

On December 14, 1937, about one month after a secret Nazi agent arrived in Central America with orders to step on the propaganda and organizational activity, the Italian steamship S. S. Leme sailed out of Naples with a cargo of guns, armored cars, mountain artillery, machine guns and a considerable amount of munitions.

On January 11, 1938, the Secretary of the Italian Legation in San Jose, Costa Rica, flew to Managua,

Nicaragua, to witness the delivery of arms which arrived in Managua on January 12, 1938. Diplomatic representatives do not usually witness purely business transactions but this was a shipment worth \$300,000 which the Italian government knew Nicaragua could not pay. But, today Italy has a firm foothold in the country through which the United States hopes to build another canal. The international espionage underground world, which knew that the shipment of arms was coming, has it that Japan, Germany and Italy split the cost of the arms among themselves to gain the friendship of the Nicaraguan government.

A study of Japanese, Nazi and Italian activities around the Canal and "sensitive zone" points to an apparent division of work among these three powers. The Japanese, who have farmed the seven seas with their fishing boats seem to confine themselves to espionage on land and sea, the Germans to propaganda in Central and South America and the Italians to winning the friendship of the Panamanian and Nicaraguan governments.

A flood of Nazi propaganda sent on short wave beams is directed at Central and South America from Germany. In Spanish, German, Portuguese and English, regular programs are sent across at government expense. Government subsidized news agencies flood the newspapers with "news dispatches" which they sell at a nominal price or give away. The programs and the "news dispatches"

explain and glorify the totalitarian form of government and since many of the [529] sister "republics" are dictatorships, they are ideologically sympathetic and receptive.

The Nazis are strong in Colombia, south of the Canal, with a band training regularly in military maneuvers at Cali. Since the Japanese-Nazi pact, the Japanese established a colony of several hundred at Corinto in the Cauca Valley, thirty miles from Cali.

The Japanese colony was settled on land carefully chosen—long, level, flat acres which can be turned into an air base overnight for a fleet landed from an airplane carrier or assembled on the spot. And it is near Cali that Alejandro Tujun, a Japanese in constant touch with the Japanese Foreign Office, is today dickering for the purchase of 400,000 acres of level land for "colonization." On this many acres enough military men could be colonized to give the United States a first-class headache in time of war—if any head was left when they got through attacking. It is two hours' flying time from Cali to the Canal.

In time of peace, the friendship of these governments so intensively propagandized, means supremacy over the United States in the struggle for markets. In time of war, should Japan, Germany, and Italy be on the enemy side, it means more than one base of operations within easy flying time of America's life line.

III

The entrances on either side of the Panama Canal are secretly mined. The locations of these mines is one of the most carefully guarded secrets of the American navy and one of the most sought after by international spies.

The Japanese, who have been fishing along the west coast and Panamanian waters for years, are the only fishermen who find it necessary to use sounding lines to catch fish. Sounding lines are used to measure the depths of the waters and to locate submerged ledges and covered rocks in this once mountainous area. Any fleet which plans to approach the Canal or use harbors even within several [530] hundred miles north or south of the Canal must have this information to know just where to go and how near to shore they can approach before sending out landing parties.

The use of sounding lines by Japanese fishermen and the mysterious goings and comings of their boats became a little too pronounced for the Panamanian government to ignore and it issued a decree prohibiting all aliens from fishing in Panamanian waters.

In April, 1937, the *Taiyo Maru*, flying the American flag but manned by Japanese, hauled up her anchor in the dead of night and with all lights out chugged from the unrestricted waters into the area where the mines are generally believed to be laid. The *Taiyo* operated out of San Diego, California;

and once established a world record of being 111 days at sea without catching a single fish. The captain piloted the boat from previous general knowledge of the waters rather than by chart when suddenly there was a harsh, grating sound. The fishing vessel was on a submerged ledge and couldn't get off.

In the morning the authorities found her, took off her captain and crew; all of whom had cameras, and asked why the boat was in restricted waters.

"I didn't know where I was," said the captain. "We were fishing for bait."

"But bait is caught in the daytime by all other fishermen," the officials pointed out.

"We thought we might catch some at night," the captain explained blandly.

Since 1934, when rumors of the Japanese-Nazi pact began to circulate throughout the world, the Japanese have made several attempts to get a foothold right at the entrance to the Canal on the Pacific side. They moved heaven and earth for permission to establish a refrigeration plant on Taboga Island, some twelve miles out on the Pacific Ocean and facing the Canal. Taboga Island would make [531] a perfect base from which to study the waters and fortifications along the coast and the islands between the Canal and Taboga.

When this and other efforts failed and there was talk of banning alien fishing in Panamanian wa-

ters, Yoshitaro Amano, who runs a store in Panama and has far flung interests all along the Pacific coasts of Central and South America, organized the Amano Fisheries, Ltd. In July, 1937, he built the Amano Maru in Japan, as luxurious a fishing boat as ever sailed the seas. With a purring Diesel engine, it has the longest cruising range of any fishing vessel afloat, a powerful sending and receiving radio with a permanent operator on board, and, the international espionage grapevine has it, an extremely secret Japanese invention enabling it to detect and locate mines.

Amano, though he is rated a millionaire in Chile, goes in for a little photography like all other Japanese in the Canal Zone area. In September, 1937, word spread through the international espionage grapevine that Nicaragua, through which the United States was planning another canal, had some sort of peculiar fortifications in the military zone at Managua.

The Japanese millionaire appeared at Managua with his expensive camera and headed straight for the military zone. In thirty minutes (8:00 a.m. of October 7, 1937) he was in a Nicaraguan jail charged with suspected espionage for taking pictures in prohibited areas.

I mention this incident because the luxurious boat was registered under the Panamanian flag and immediately began a series of actions so peculiar that the Republic of Panama canceled the Pana-

manian registry. The Amano promptly left for Puntarenas, Costa Rica, north of the Canal, which has a harbor big enough to take care of almost all the fleets in the world. Many of the Japanese ships went there, sounding lines and all, when alien fishing was prohibited in Panamanian waters. Today the Amano Maru is a mystery [532] ship haunting Puntarenas and the waters between Costa Rica and Panama and occasionally vanishing out to sea with her wireless crackling constantly.

Some seventy fishing vessels operating out of San Diego, California, fly the American flag. San Diego is of great importance to a potential enemy because it is a naval as well as an air base. Out of these vessels flying the American flag, ten are either partially or entirely manned by Japanese.

Let me illustrate how boats fly the American flag:

On March 9, 1937, the S. S. Columbus was registered as an American fishing vessel under certificate of registry No. 235,912, issued at Los Angeles, California. The vessel is owned by the Columbus Fishing Company of Los Angeles.

I do not know where the boat went but on December 9, 1937, she appeared at Balboa, Panama. The captain, R. I. Suenaga, is a 26-year-old Japanese, born in Hawaii and a full fledged American citizen. The navigator and one sailor also are Japanese, born in Hawaii but American citizens. The crew of ten consists entirely of Japanese born in Japan.

The ten boats which fly the American flag but are manned by Japanese crews are:

Alert

Asama

Columbus

Flying Cloud

Magellan

San Lucas

Santa Margarita

Taiyo

Oipango

Wesgate

Each boat carries a short wave radio and has a cruising range of from 3,000 to 5,000 miles which is extraordinary for just little fishing boats. They operate on the high seas and where they go, only the master and crew and those who send them know. The only time anyone gets a record of them is when they come in to refuel or repair. [533]

In the event of war half a dozen of these fishing vessels, stretched across the Pacific at intervals of 500 or 1,000 miles would make a perfect system of communication for messages which could be relayed from one to another and in a few moments be at their destination.

IV

In Colon on the Atlantic side and in Panama on the Pacific, East and West literally meet at the cross roads of the world. The winding streets are

crowded with brown and black skins who comprise three-fourths of Panama's population. Old world stores seek the tourist trade, turbaned Hindus offer the silks of India and Chinese the embroideries of old Cathay. Panamanian and West Indian tailors seek the army and navy trade and the innumerable bars cater to everyone. And on these teeming, hot, tropical streets are some 300 Japanese storekeepers; fishermen, commission merchants and barbers, few of whom do much business but all of whom sit patiently in their doorways, reading the newspapers or staring at the passersby.

I counted 47 Japanese barbers in Panama and 8 in Colon. In Panama they cluster on Avenida Central and Calle Carlos A. Mendoza. On both these streets rents are high and, with the exception of Saturdays when the natives come for haircuts, the amount of business the barbers do does not warrant the three to five men they have in each shop. Yet, though they earn scarcely enough to meet their rent, there is not a lowly barber among them who does not have a Leica or Contax camera with which, until the sinking of the Panay, they wandered around, photographing the Canal, islands around the Canal, the coast line, and topography of the land.

They live in Panama with a sort of permanence, but nine out of ten do not have families, even those advanced in years. Periodically some of them take trips to Japan, though, if you watch their business

carefully you know they could not possibly have earned enough to pay for their passage. And those in the outlying districts [534] don't even pretend to have a business. They just sit and wait, without any visible means of support. It is not until you study the locations where they are, as in the Province of Chorrera, that you find they are in spots of strategic military or naval importance.

With so many barbers in Panama, the need for an occasional gathering without attracting too much attention is apparent and the little barber, A. Sonada, who shaves and cuts hair at 45 Carlos A. Mendoza Street, organized a labor union, the Barbers' Association. The Association will not accept barbers of other nationalities but will allow Japanese fishermen to attend their meetings. They meet on the second floor of the building at 58 Carlos A. Mendoza St., where many of the fishermen live and at these meetings a guard stands outside the room and another downstairs at the entrance to the building.

On hot Sunday afternoons when the Barbers' Association gathers, the diplomatic representatives of other nations are usually taking a siesta or are down at the beach, but Tetsuo Umimoto, the Japanese Consul, climbs the stairs in the hot, stuffy atmosphere and sits in on the deliberations of the barbers and visiting fishermen. It is the only union I ever heard of, the deliberations of whose 47 members are considered important enough for the dip-

omatic representative of the country to sit in on. This labor union has another extraordinary custom. It has a special fund to put competitors up in business. Whenever a Japanese arrives in Panama, the Barbers' Association opens a shop for him, buys the chairs and takes care of everything so their competitor in the shaving and shearing industry can have a place to call his own while he competes with them for the scarce trade!

At these meetings the barber Sonada who is only a hired hand, sits beside the Japanese Consul at the head of the room and Umimoto remains standing until Sonada is seated. When another barber, T. Takano, who runs a little hole in the wall shop and lives at 10 [535] Avenida B, shows up, both Sonada and the Consul rise, bow very low and remain standing until he motions them to be seated. Maybe it's just an old Japanese custom but the Consul does not extend the same courtesy to the other barbers.

In attendance at these guarded meetings of the barbers' union and visiting fishermen is Katarino Kubayama, a gentle-faced, soft-spoken, middle-aged man who is a business man with no visible business. He is 54 years old now and lives at Calle Colon, Casa No. 11, and for the benefit of the Panamanian immigration officials, I might add that his alien registration card which he filled out is not quite accurate, like most of the cards the other Japanese filled out. Kubayama stated that he came to Pan-

ama on May 10, 1930, which is correct, but that was when he returned from a trip to Japan. Actually he has been in the Canal Zone area since before the World War.

Way back in 1917 Kubayama was a barefoot Japanese fisherman like the others now on the west coast. One morning two Japanese battleships appeared and anchored in the harbor. From the reed and vegetation covered jungle shore a sun dried, brown Panga shot out, with the barefooted fisherman rowing the flat bottomed boat with the short quick strokes of the native. His brown, soiled dungarees were rolled up to his calves, his shirt, open at the throat, was torn and his head was covered by a ragged straw hat.

The silvery notes of a trumpet sounded over the limpid blue waters of the Pacific. The crew of the flagship lined up at attention. The officers, including the Commander, also waited stiffly at attention while the ragged fisherman tied his panga to the ship's ladder. As Kubayama clambered on board the officers saluted and with a great show of formality escorted him to the Commander's quarters, the fisherman's bare feet leaving wet tracks on the spotless deck. The junior officers followed behind at a respectful distance, and when, two hours later, Kubayama, was escorted to the ladder again, this courtesy extended only to a high ranking officer of the Japanese navy [536] was gone through with,

the trumpet sounding its salute as the ragged fisherman in the panga rowed away.

Today Kubayama works closely with the Japanese Consul. Together they call upon the captains of Japanese ships whenever they come to Panama and are closeted with them for hours at a time. Kubayama says he is trying to sell supplies to the captains.

Other Japanese in the Canal Zone area just change their names periodically or come with several passports all prepared, like Shoichi Yokoi who commutes between Japan and Panama without any business reasons. On June 7, 1934, the Japanese Foreign Office in Tokyo issued passport No. 255875 to him under the name of Masakazu Yokoy with permission to visit all Central and South American countries. Though he had permission for all, he applied only for a Panamanian visa on September 28, 1934, after which he settled down for a while to live with the fishermen and harbers. On July 11, 1936, Masakazu Yokoy was handed another passport in Tokyo by the Foreign Office under the name of Shoichi Yokoi and a mess of visas which filled the whole passport and overflowed into several extra pages. Shoichi or Masakazu is now traveling with both passports. He left Panama for Port-au-Prince, Haiti, January 16, 1938, on the S. S. Colombia as Shoichi Yokoy. Besides two passports he has a suitcase full of film for his camera. He will be in the Caribbean and Central American areas for the

next two years if any of those countries are interested in picking him up.

V

Several years ago a Japanese named T. Tahara came to Panama as the traveling representative of a newly organized company, the Official Japanese Association of Importers and Exporters for Latin America, and established headquarters in the offices of the Boyd Bros., shipping agency in Panama. [537]

Nelson Rounsevell, publisher of the Panama American who has fought Japanese colonization, in Canal areas, published a story that this big business man got very little mail, made no efforts to establish business contacts and, in talking with the few business men he met socially, showed a complete lack of knowledge about business. Tahara got himself talked about and orders promptly came through for him to shake a leg and return to Japan.

This was in 1936. Half a year later, a smooth, suave Japanese named Takahiro Wakabayashi appeared in Panama as the representative of the Federation of Japanese Importers and Exporters. Wakabayashi checked into the cool and spacious Hotel Tivoli, run by the United States government on Canal Zone territory and, protected by the guardian wings of the somewhat sleepy American Eagle, washed up and made a beeline for the Boyd Bros. office where he was closeted with the general manager for over an hour.

Wakabayashi's business interests ranged from taking pictures of the Canal in specially chartered planes, to negotiating for manganese deposits and efforts to establish an "experimental station to grow cotton in Costa Rica."

The big manganese-and-cotton-photographer man fluttered all over Central and South America, always with his camera. One week he was in San Jose, Costa Rica, the next he made a hurried special flight to Bogota, Colombia (November 12, 1937) then back to Panama and Costa Rica. Finally he got permission from Costa Rica to establish his experimental station.

In obtaining that concession he was aided by Giuseppe Sotanis, an Italian gentleman wearing the Fascist insignia in the lapel of his coat, whom he met at the Gran Hotel in San Jose. Sotanis, a former Italian artillery officer, is a nattily dressed, slender man in his early forties who apparently does nothing in San Jose except study his immaculate finger nails, drink Scotch and sodas, collect stamps and vanish every few months only to reappear again, still studying his immaculate finger nails. It was Sotanis who arranged for Nicaragua to get the shipment of arms and munitions which I mentioned earlier. [538]

This mysterious Italian stamp collector paved the way for Wakabayashi to meet Raul Gurdian, the Costa Rican Minister of Finance and Ramon Madrigal, vice-president of the government-owned Na-

tional bank and a prominent Costa Rican merchant. Shortly after Costa Rica gave Wakabayashi permission to experiment with his cotton growing, both the Minister of Finance and the vice-president of the government bank took trips to Japan. I didn't even try to find out who paid for them.

The ink was scarcely dry on the agreement to permit the Japanese to experiment in cotton growing, when a Japanese steamer appeared in Puntarenas with twenty-one young and alert Japanese and a bag of cotton seed. They were "laborers" Wakabayashi explained. The "laborers" were put up in first-class hotels and took life easy while Wakabayashi and one of the laborers started hunting a suitable spot on which to plant their bag of seed. All sorts of land was offered to them, rich soil in protected valleys but Wakabayashi wanted no land anywhere near a hill or mountain. He finally found what he wanted half-way between Puntarenas and San Jose, long, level, flat acres. He wanted this land at any price and finally rented it at an annual price equal to the value of the acres.

The twenty-one "laborers" who had been brought from Chimbota, Peru, where there is a colony of 20,000 Japanese, planted an acre with cotton seed and sat them down to rest. They are still resting there, imperturbable, bland, silent, waiting. The land has been plowed. It is as smooth and level as the acres at Corinto, in Colombia, south of the Canal.

The harbor at Puntarenas, where the Japanese fishermen are busy, would make a perfect base of operations for any enemy fleet, as I mentioned earlier. Not far from shore are the flat level acres of the "experimental station" and twenty-one Japanese who could turn these smooth acres into an air base almost overnight. It is north of the Panama Canal and within two hours' flying time of it, as Corrinto [539] is south of the Canal and within two hours' flying time.

VI

The Boyd Bros. steamship agency to which Tahara and Wakabayashi went immediately upon arrival, is an American concern. The manager, with whom each was closeted, is Hans Hermann Heildelk of Anenida Peru, No. 64, Panama City, and, though efforts have been made to keep it secret, part owner of the agency. Heildelk is also the son-in-law of Ernest F. Neumann, the Nazi consul to Panama.

On November 15, 1937, Heildelk returned from Japan by way of Germany. Five days later, on November 20, 1937, his father-in-law, who, besides being Nazi consul, owns, in partnership with Fritz Kohpeke, one of the largest hardware stores in Panama, told his clerks that he and his partner would work a little late that night. Neither partner went out to eat and the corrugated sliding door of the store at Norte No. 54 in the heart of the Panamanian commercial district, was left open about

three feet from the ground so that passersby could not see inside unless they stooped deliberately.

When all neighborhood stores were dark and the half-naked Panamanian and West Indian children and their parents sat outside for a breath of air in the cool tropical evening, the two partners sat at their adjoining desks in the rear of the store. The one bright light overhead threw dark shadows upon the rows of shelves filled with hardware. A third desk facing Kohpeke had a pile of printed material and mail which had just come in from Germany.

Promptly at eight o'clock a car drew up at the corner of the darkened street in front of Neumann & Kohpeke, Ltd. Two unidentified men, Heildelk and Walter Scharpp, former Nazi Consul at Colon who also had just returned from Germany, stepped out, and stooping under the partly open door, entered the store. Once inside Scharpp quietly assumed command. For all practical purposes they were on German territory for the Nazi consulate office was in the store. [540]

Scharpp announced that the group had been very carefully chosen because of their known loyalty to Nazi Germany and their desire to promote friendship for Germany in Latin American countries and to co-operate with the Japanese who had their own organization functioning efficiently in Central and South America.

“Some of these countries are already friendly,” said Scharpp, “and we can work undisturbed provided we do not interfere in the Panama Canal Zone.”

“But the Canal Zone—” interrupted Heildelk.

“Is North American territory, and you will have trouble from their officials, intelligence officers and political pressure from the States. You understand?”

“Panama is friendly to North America,” said Kohpeke significantly.

“Precisely, we must watch the Panamanian government very carefully. At the present time it is not wise to do much more than broadcast but at a propitious time we shall be able to explain National Socialism to the Panamanians.”

He looked at the heavy-eyed Kohpeke whose left eyelid drooped more than his right and gave him the appearance of being perpetually sleepy. Kohpeke looked at Neumann who ran the palm of his hand over his slightly bald head and nodded.

“Tonight we want to organize a bund in Panama. In a few days I am going to Costa Rica to organize another and then leave for Valparaiso.”

The others nodded. They had been informed that Scharpp was to have complete charge of Nazi activities from Valparaiso to Panama. That night, they established Der Deutsche Ausländischer Nazi Genossenschaft Bund, with the understanding that

it function secretly. The list of members was to be controlled by Neumann.

Scharpp explained that secrecy was advisable to avoid antagonizing the Panamanian government, "which is friendly to Italy and we can co-operate with the Italian Legation here." [541]

"The Japanese are more important than the Italians," the sleepy-eyed Kohpcke pointed out.

"The Japanese will work with us," Heildelk assured him.

"But we can't be seen with them—"

"Fritz (Kohpcke) will call a meeting in Jacobs' house near the Panama airport," said Scharpp.

"Jacobs!" exclaimed one of the unidentified men.

"You don't mean the Austrian Consul!"

Scharpp nodded slowly. "He is generally believed to be anti-Nazi. His partner spent twelve years in Japan and speaks Japanese perfectly. The Japanese Consul knows and trusts both. We cannot find a better place."

On the night of December 13, 1937, forty carefully selected Germans who, during the intervening month had become members of the bund in Panama, arrived singly and in small groups to the new home where August Jacobs-Kantstein, Panamanian merchant and Austrian honorary consul lived.

Five Japanese, headed by Tetsuo Umimoto also came. One, K. Ishibashi, formerly captain of the Hokkai Maru and a reserve officer in the Japanese

navy; K. Ohihara, a Japanese agent staying with the Japanese consul but having no visible reason to be in Panama; two captains of Japanese fishing boats and A. Sonada, the barber who organized the labor union and in whose presence the consul will not sit until the barber is seated.

Throughout the meeting, presided over by the elderly but tall, soldierly Austrian consul, the Japanese said little. It was primarily the first get-together for Nazi-Japanese co-operation in the Canal Zone area.

"Mr. Umimoto has not said much," said the Austrian Consul once, tugging at his snowy mustaches extending fiercely across his face.

"There is so little to say—when there are so many present," [542] said the little Consul apologetically but significantly.

The others understood. The Japanese were too shrewd to discuss detailed plans with so many present. A few days later Umimoto called upon Heil-delk and was closeted with him for three hours, and shortly after that Sonada left for Japan. He is expected back early in June.

VII

Today propaganda comes in a ceaseless stream from Nazi Germany; Italian fascist arms are delivered to Nicaragua with no indication of payment; Japanese agents have a vast espionage ring and

have already flanked America's life line both to the north and to the south with potential air bases.

These three powers have demonstrated their aggressive, war-like policies. Now they have turned hungry eyes toward Central and South America despite the Monroe Doctrine. Desperate efforts are made to learn Canal defense secrets, the waters and the harbors are being charted. What are they preparing for?

(End of Defendants' Exhibit "A" for
Identification.)

[543]

[Title of District Court and Cause.]

**STIPULATION FOR ORDER SETTLING
BILL OF EXCEPTIONS**

It is hereby stipulated by and between the Government and the defendants herein that the foregoing Bill of Exceptions has been duly presented within the time allowed by law and the rules and orders of this Court, and that the same is in proper form and conforms to the truth and sets forth all of the evidence and all of the proceedings taken and had upon the trial of the above entitled action, and that it may be settled, allowed, signed and certified by said Court as the Bill of Exceptions herein presented and filed on behalf of said defendants, and that it may be made a part of the record of this cause.

Dated: this 29th day of June, 1939.

BEN HARRISON,

United States Attorney

By **NORMAN W. NEUKOM**

Assistant United States

Attorney

Attorney for Plaintiff

**PACHT, PELTON, WARNE
& BLACK**

By **CLORE WARNE**

CLORE WARNE

Attorneys for defendant

Mikhail Nicholas Gorin

WILLARD J. STONE, JR.

Attorney for defendant

Hafis Salich

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing Bill of Exceptions together with Stipulation attached thereto, having been duly presented within the time allowed by law and the rules and orders of this Court, and appearing correct in all respects is hereby approved, allowed, settled and made a part of the record of said action.

Dated: this 29 day of June, 1939.

RALPH E. JENNEY

United States District Judge

Received copy of the within Bill of Exceptions
this 10th day of June, 1939.

BEN HARRISON, ESQ.,
United States Attorney
By WM. FLEET PALMER,
Assistant

[Endorsed]: Lodged Jun. 10, 1939.

[Endorsed]: Settled and filed Jun. 29, 1939.

In the United States Circuit Court of Appeals
For the Ninth Circuit
No. 9136

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAFIS SALICH and MIKHAIL
NICHOLAS GORIN,

Defendants.

STIPULATION RE: ASSIGNMENT OF ER-
RORS ON APPEAL OF DEFENDANT
HAFIS SALICH.

It is hereby stipulated by and between Ben Har-
rison, United States Attorney, by Norman W.
Neukom, Assistant United States Attorney, on be-
half of the United States of America, and Willard
J. Stone, Jr., attorney for defendant Hafis Salich,
on behalf of said defendant Hafis Salich as follows:

That whereas, upon the trial of the said defend-

ant, the Government sought to and did introduce into evidence certain documents designated as Government Exhibits 5A through 5M inclusive, and 6A through 6DD inclusive, and a certain other document introduced as Government Exhibit No. 3, to all of which documents an objection was made by the defendant Salich which said objection made to each and every one of said documents was overruled, and said documents were admitted into evidence over the objection of said defendant pursuant to the stipulation and ruling of the Court all as appears by the record as follows:

"Mr. Harrison: Now, if the Court please, we desire to offer in evidence report number designated as 833.

To which offer objection was made on behalf of the defendant Gorin upon the following grounds:

1. That no proper foundation has been laid for the introduction of said writing, for the reason that it has not [147] been shown, and there is no evidence to prove, that said report, or any part thereof, relates to or is connected with the national defense of the United States.
2. That said report on its face shows that it is not a part of and is not connected with and does not relate to the national defense of the United States as that term is used in Section 31, 32 and 34 of the Espionage Act.

3. That said report is not an instrument, writing, or document connected with or relating to the national defense as that term is used in Section 31, 32 and 34 of the Espionage Act.

4. That said report on its face shows that it is but a communication by one officer of the United States Navy to another officer of said Navy reporting certain information acquired by said reporting officer concerning the acts and conduct of certain persons in the United States, and that it is not connected with nor does it relate to the national defense of the United States as that term is used in the Espionage Act.

5. That said report shows on its face that it is but the conclusion and opinion of the reporting officer, relative to the acts and conduct of a certain individual or individuals and the transmission of said reporting officer to another officer of such conclusions and opinions, and that it is not anything connected with the national defense or relating to the national defense as that term is used in the Espionage Act under which this prosecution is being had.

6. That the introduction of said report in evidence would have the effect of making the judgment, opinion and conclusion of an officer of the United States Navy a standard whereby to determine the conduct of the defendants and other [148] persons dealing with the United

States Navy and permitting said officer to in effect legislate and create criminal statute.

7. That the introduction in evidence of said report would be to give to a regulation of the United States Navy relative to information acquired by its officers and employees the effect of a criminal statute, all in violation of the Fifth and Sixth Amendments of the Constitution of the United States.

8. That no proper foundation has been laid for the introduction of said writing for the reason that it has not been shown, and there is no evidence to prove, that a conspiracy was entered into to which the defendant Gorin was a party, and for the further reason that the corpus delicti has not been established.

10. That the said document constitutes hearsay testimony as to the defendant Gorin and is not binding on him.

Mr. Stone: May I join in that objection, your Honor, as to all the grounds stated by Judge Pacht, save grounds 8, 9 and 10?

The Court: As to grounds 1 to 7, the objection is overruled and exception allowed.

As to objections 8, 9 and 10—was 10 the last one?

Mr. Pacht: Yes, your Honor.

The Court: As to objections 8, 9 and 10, the objection will likewise be overruled, subject to a motion to strike at some later time in the

event that the proper connection is not made, the order of proof being largely within the discretion of the Court. An exception is allowed as to these also.

The Clerk: That will be Government's Exhibit 5 (a).

Mr. Pacht: Contained in Exhibit 5? [149]

Mr. Harrison: This number will be 5(a), indicating that it is folder marked No. 5 for identification, and the specific exhibit is marked '(a).'

Whereupon the document referred to was received in evidence and marked 'Government's Exhibit No. 5(a).'

The Court: Now, I presume you propose to make the same formal objection to each one of these proffers of exhibits, is that correct?

Mr. Pacht: That is correct.

The Court: Then, in order to save counsel the burden of repeating his objection, may we not have a stipulation on that subject, and a stipulated ruling?

Mr. Harrison: As far as the Government is concerned, we are perfectly willing that the objection heretofore made shall be deemed, as applying to the offering of each and every one of these documents.

The Court: And that the objection is overruled and an exception allowed as to each one?

Mr. Harrison: Yes.

The Court: Then, if there is any special objection to one particular document, that may be reserved and made at the time, and ruled upon separately.

Mr. Pacht: Yes, but is not necessary for me to urge objections to each separate report which Mr. Harrison intends to introduce from this volume?

The Court: You will not be so required, provided your objection is on the ground already stated.

Mr. Pacht: Yes.

The Court: If you have a distinct and separate objection to one of these, you must make it specifically.

Mr. Pacht: Yes.

Mr. Stone: And that applies, of course, to the defendant Salich as well, your Honor?

The Court: The same ruling and the same stipulation will be accepted as to the defendant Salich.

Mr. Stone: That is satisfactory.

The Court: Is it so stipulated?

Mr. Stone: Yes.

Mr. Pacht: Yes.

Mr. Harrison: So stipulated, if the Court please."

And whereas for the purpose of preparing the assignment of errors on behalf of the defendant Salich

it would unnecessarily encumber the record to set out in each and every error assigned respecting the introduction of each of these aforesaid documents, the entire grounds for the objection to said evidence, and the verbatim contents of each of the said documents.

And whereas there was offered in evidence by the defendant Salich as an exhibit, which offer was rejected, a certain article contained and published in "Ken," a magazine of national circulation, the whole of which appears and will be set forth word for word in the bill of exceptions herein, and it will unnecessarily encumber the record on appeal to again set said article forth in the assignments of error.

Now therefore it is stipulated that it will be sufficient for the purposes of this appeal, to set forth in the assignment of errors urged as to the admission of the first of said documents, all as noted above, the full grounds of the objections stated by the defendant Salich, the ruling of the Court therein, and the exceptions noted thereto, and the verbatim contents of the said exhibit, and as to each of the remaining assignments of error specifically referring to the introduction of the remainder of said series of documents, it will be sufficient to refer to the grounds stated and set forth in the [151] assignment of error to the first of said documents as indicated herein, and it will be further sufficient to refer to and identify the exhibits as they are set

forth in the bill of exceptions without repeating the same in the assignment of error verbatim.

It is further stipulated that it will be sufficient, for the purposes of this appeal, in the assignments of error, urged as to the refusal of the Court to admit into evidence the Ken magazine article, to specify and refer to it as printed in the bill of exceptions, without setting the same forth word for word in said assignment of error.

Dated: This 7th day of June, 1939.

BEN HARRISON,

United States Attorney

By **NORMAN W. NEUKOM**

Assistant United States
Attorney.

WILLARD J. STONE, JR.

Attorney for defendant
Salich.

ORDER

Upon the attached stipulation of the parties and good cause appearing therefor;

It is ordered that in the Assignment of Errors of the defendant Salich, it will be sufficient to refer to and specify by reference to the verbatim copies of exhibits appearing in the Bill of Exceptions as to Government Exhibits 5B to 5M inclusive and 6A to 6DD inclusive without repeating said exhibits verbatim in said Assignment of Errors, and that

there need be no repetition in the Assignment of Errors of grounds of objections urged to said exhibits except as set forth in the Bill of Exceptions by reference to the grounds urged as to Government Exhibit 5A. [152]

It is further ordered that it will be sufficient for the purposes of this appeal in the Assignments of Error urged as to the refusal of the Court to admit into evidence a certain article contained and published in "Ken," a magazine of national circulation, and designated as Defendant's Exhibit A for identification, to specify and refer to it as printed in the Bill of Exceptions without setting the same forth word for word in said Assignment of Errors.

Dated this 9th day of June, 1939.

CURTIS D. WILBUR

Judge, United States Circuit
Court of Appeals [153]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now the said Hafis Salich, defendant and appellant in the above entitled cause, and files the following Assignment of Errors upon which he will rely in the prosecution of the appeal heretofore noticed in said cause from the judgment of conviction and sentence of this Court pronounced on the 20th day of March, 1939.

I

The Court erred in overruling the demurrer and motion to quash indictment made by defendant Hafis Salich.

II

The Court erred in denying motion of defendant Hafis Salich for a directed verdict made at the conclusion of the opening statement of the District Attorney.

III

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney, Mr. Harrison, propounded to Witness Alice A. Nelson:

Q. What did Mrs. Gorin say to you at that time:

To which question objection was made on behalf of defendants Gorin and Salich on the ground that it was hearsay as to [60] them, not binding, incompetent, irrelevant, and immaterial, and on the further ground that no foundation had been laid and no proof of any conspiracy had been introduced, which said objection was overruled, subject to a motion to strike said testimony if not connected up. Exception allowed.

The Witness: She asked me when I expected Mr. McCloud in, and how long did I think she would have to wait for him.

By Mr. Harrison:

Q. Did you make any reply to her?

A. I told her that it would be some time around 12:00 or 12:30; that he usually came in about that time.

Q. And what time did you say this conversation took place, about what time?

A. Around 10:30 in the morning.

Q. Was that the substance of your conversation at that time?

A. Yes. She came back and asked me, I would say may two or three times afterwards, how much longer—

Q. (Interrupting) I mean at that time.

A. At that time that was all there was to it.

Q. Then at that time what did Mrs. Gorin do?

A. She went out and sat down in the office.

Q. Did she continue to remain there?

A. Part of the time; part of the time she was walking around.

Q. Did you have any further conversation with her that morning?

A. That was the substance of it, because that was what she was asking. She asked me perhaps two or three times more, how much longer I thought it would be, and if I had heard from Mr. McCloud.

[61]

IV

The court erred in denying the motion made on behalf of the defendant Salich to strike the whole of the testimony of the Witness Alice A. Nelson as follows:

(Direct Examination): Evidence of Witness Alice A. Nelson.

By Mr. Harrison:

My name is Alice A. Nelson and I live at 1907 Lucile Avenue. I own a dry cleaning establishment located at 4400 Melrose. It is operated under the name of Leonard and Nelson Dry Cleaning Company. I have never seen Mrs. Gorin until September 30th when she came into the store. I would say it was approximately 10:30 in the morning when she came to my place on that day. The office force was present when she came in. A gentleman was with her. I would know him again if I saw him. I didn't know his name at the time. Thereafter I learned his name. It was Stepanian. I had a conversation with Mrs. Gorin at my place of business when she came in that morning. I think perhaps Mr. Leonard was also present. I couldn't say definitely. We were all working in the back part of the store, and Mrs. Gorin was standing at the back part of the store, where they could hear any conversation that went on. Whether they made any note of it or not, I couldn't say.

Q. What did Mrs. Gorin say to you at that time?

To which question objection was made on behalf of defendants Gorin and Salich on the ground that it was hearsay as to them, not binding, incompetent, irrelevant and immaterial, and on the further ground that no foundation had been laid and no proof of any conspiracy had been introduced, which

said objection was overruled, subject to a motion to strike said testimony if not connected up. Exception allowed.

The Witness: She asked me when I expected Mr. McCloud in, and how long did I think she would have to wait for him. [62]

By Mr. Harrison:

Q. Did you make any reply to her?

A. I told her that it would be some time around 12:00 or 12:30; that he usually came in about that time.

Q. And what time did you say this conversation took place, about what time?

A. Around 10:30 in the morning.

Q. Was that the substance of your conversation at that time?

A. Yes. She came back and asked me, I would say maybe two or three times afterwards, how much longer—

Q. (Interrupting) I mean at that time.

A. At that time that was all there was to it.

Q. Then at that time what did Mrs. Gorin do?

A. She went out and sat down in the office.

Q. Did she continue to remain there?

A. Part of the time; part of the time she was walking around.

Q. Did you have any further conversation with her that morning?

A. That was the substance of it, because that was what she was asking. She asked me perhaps two or three times more, how much longer I

thought it would be, and if I had heard from Mr. McCloud.

Q. Did you notice her demeanor at that time?

To which question objection was made by the defendant Gorin upon the ground as calling for the opinion of the witness, which objection was overruled. Exception allowed.

The Court:

The witness is instructed not to say what she concluded about the conduct of the witness, or to draw any inferences. She [63] may tell what Mrs. Gorin did and what her actions were. If, from that, the jury is able to say that she was glad or laughing or agitated, that is a matter for the jury to determine.

By Mr. Harrison:

Q. Will you proceed in accordance with the Court's instructions, Mrs. Nelson?

Evidence of Alice A. Nelson continued.

A. Well, I don't know just what I would say, except that she walked around the store, she wouldn't remain seated. We offered her a magazine, and she didn't want to read. And that was about all I could say.

(Witness continues) That morning she asked me about three times how much longer I thought it would be before Mr. McCloud would come in. Mr. Stepanian did not remain there during the balance of the morning. He left about a half hour after they arrived. I did not talk to Mrs. Gorin at any time

that morning on the telephone. I was not present when the envelope was returned to her. I did not remain at the shop all morning. I left around twelve o'clock to meet Mr. McCloud. When I met him he showed me a plain envelope with a sheet of paper with typewriting on it, and a map drawn on it, and some writing at the bottom in a foreign language which I didn't know what it was—and a \$50 bill. The document Mr. McCloud showed me was a plain sheet of paper, with some typewriting at the top, mentioning some Japanese names, Nakadate was one, and some Japanese dentists, also by the name of Nakadate, as I recall; and a beauty shop operated in San Diego; and a map drawn at the bottom of it, showing a square in the center, and two squares down at the bottom like they might be branches or something of the sort, and the writing was at the bottom of it. I could not read the writing. It was unintelligible to me. I would say that Government's Exhibit No. 3 for [64] identification which you have shown me was an exact copy of it except for the writing at the bottom. I had no conversation with Mrs. Gorin relative to whether or not the money had been found.

Cross Examination

By Mr. Stone:

At the time I met Mr. McCloud it was close to twelve o'clock. I was with him I should say five minutes, maybe ten. I met him at the corner of

Beverly and Kenmore. We sat in the car and looked over this paper and discussed what to do with it. At the end of ten minutes I returned to the shop. I have never seen the original paper since I first saw it in the car.

Defendant Salich then moved the Court to strike the whole of the testimony of the witness Alice A. Nelson upon the ground that it was not binding on him and did not tend to prove or disprove any of the issues against him, which said motion was denied. Exception allowed.

V

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney propounded to Witness Denton W. Leonard:

Q. (Repeated) And what did the party purporting to be Mrs. Gorin say to you.

To which question objection was made on behalf of the defendants Gorin and Salich that it was hearsay as to them and that no conspiracy had as yet been proven and that any statement made by Mrs. Gorin was not binding on them, which objection was overruled. Exception allowed.

The Witness: She said that our driver had called at their home and picked up several garments for dry cleaning, and that in [65] the pocket of one of the suits was some money and some valuable papers.

By Mr. Harrison:

Q. Was anything else said by you to her in response to that statement?

A. I told her that if they were in the pocket when he picked them up, they would be in the pocket when he brought them in, or he would find them in the meantime.

The Court: Will you repeat that last portion of your statement? I didn't get it.

The Witness: I told her that if they were in the pocket when he picked the garment up, that they would still be there when he brought it in, or else he might have found them in the meantime.

VI

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney propounded to Witness Roy Hanna:

Q. Will you relate to the jury the conversation that you overheard between Commander Davis, Commander Rochefort, and defendant Salich?

To which question defendant Gorin objected upon the grounds that even though it was not offered against him, it was all remote, and irrelevant, not to be binding, and that the relation of such conversation would bring before the jury matters which could not but be highly prejudicial, which said objection was overruled. Exception allowed.

The defendant Salich objected upon the ground that it would not tend to prove or disprove any

issue in the case and would be inflammatory and prejudicial, which said objection was overruled. Exception allowed. [66]

A. Commander Davis, when Salich came in the office, I was introduced to Salich, and Commander Rochefort was introduced to Salich.

Q. A little louder so we can all hear you.

A. In the course of the conversation Lieutenant-Commander Rochefort told Salich what the office did and the—

Q. (Interrupting) Wait. Relate what he said.

A. Mr. Rochefort said that everything that Salich did in the office, or outside of the office, was confidential, and that at no time was he to reveal anything that occurred in the office to anyone on the outside, and in addition, he further instructed Salich that he was not to tell any member of his family or his wife.

Q. Did he tell him what position he was being employed in, or what position he was to fill?

A. He told him he was being employed as an investigator.

Q. For what?

A. For the Naval Intelligence.

Q. And did Mr. Salich say anything during that conversation, as you recall?

A. Mr. Salich asked whether or not he could obtain an identification card or some badge with which to work with on the outside.

Q. Did he state what type of a badge he wanted?

A. To identify himself with the Naval Intelligence or some other badge which would give him authority.

Q. What was told to him?

A. He said—Mr. Rochefort said—that the Navy, or the officers of the Naval Intelligence, did not issue any passes of any kind or badges or identification cards.

Q. Did he have any conversation with him at that time as [67] to whether or not he was to disclose his identity, as you recall?

A. Mr. Rochefort told him that he would at that time not reveal that he was working for the Naval Intelligence.

By Mr. Neukom:

Q. Do you recall to your best recollection the date in August of 1936 that this took place?

A. 15th of August, 1938

Q. That is your best recollection?

A. That is right.

VII

The Court erred in denying the motion of defendant Salich to strike the whole of said conversation related by said witness Roy Hanna as follows:

Evidence of Witness Roy Hanna.

Q. Will you relate to the jury the conversation that you overheard between Commander Davis, Commander Rochefort, and defendant Salich?

To which question defendant Gorin objected upon the grounds that even though it was not offered

against him, it was all remote, and irrelevant, not to be binding, and that the relation of such conversation would bring before the jury matters which could not but be highly prejudicial; which said objection was overruled. Exception allowed.

The defendant Salich objected upon the ground that it would not tend to prove or disprove any issue in the case and would be inflammatory and prejudicial, which said objection was overruled. Exception allowed.

A. Commander Davis, when Salich came in the office, I was introduced to Salich, and Commander Rochefort was introduced to Salich.

Q. A little louder so we can all hear you. [68]

A. In the course of the conversation Lieutenant-Commander Rochefort told Salich what the office did and the—

Q. (Interrupting) Wait. Relate what he said.

A. Mr. Rochefort said that everything that Salich did in the office, or outside of the office, was confidential, and that at no time was he to reveal anything that occurred in the office to anyone on the outside, and in addition, he further instructed Salich that he was not to tell any member of his family or his wife.

Q. Did he tell him what position he was being employed in, or what position he was to fill?

A. He told him he was being employed as an investigator.

Q. For what?

A. For the Naval Intelligence.

Q. And did Mr. Salich say anything during that conversation, as you recall?

A. Mr. Salich asked whether or not he could obtain an identification card or some badge with which to work with on the outside.

Q. Did he state what type of a badge he wanted?

A. To identify himself with the Naval Intelligence or some other badge which would give him authority.

Q. What was told to him?

A. He said—Mr. Rochefort said—that the Navy, or the officers of the Naval Intelligence, did not issue any passes of any kind or badges or identification cards.

Q. Did he have any conversation with him at that time as to whether or not he was to disclose his identity, as you recall?

A. Mr. Rochefort told him that he would at that time not reveal that he was working for the Naval Intelligence.

[69]

By Mr. Neukom:

Q. Do you recall to your best recollection the date in August of 1936 that this took place?

A. 15th of August, 1938.

Q. That is your best recollection?

A. That is right.

The defendant Gorin moved the Court to strike the whole of the conversation related by the witness between Commander Rochefort, Commander Davis, and Mr. Salich, upon the grounds theretofore urged

in objection to the questions covering such conversation, and on the further grounds that the instructions which Commander Rochefort gave Salich and what he designated as secret and confidential, was incompetent and immaterial. Objection was overruled. Exception allowed.

The defendant Salich moved to strike the whole of said conversation on the grounds that the evidence was too remote and had no tendency to prove or disprove the issues in the case. Objection overruled. Exception allowed.

VIII

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney propounded to Witness Roy Hanna:

Q. Will you recall the substance of the conversation, as you heard it, and in doing so, explain to the jury who was doing the talking.

To which question defendant Gorin objected on the ground that it was hearsay as to him, and that extra-judicial statements or declarations of Salich are incompetent, irrelevant and immaterial. That there has been no proof of conspiracy, and that corpus delicti had not been established. Objection overruled. Exception allowed. [70]

Defendant Salich objected on the ground that there has been no proof of a corpus delicti, no proof of the conspiracy, and that the extra-judicial statements of Salich were not to be used against him

at that time. Objection overruled. Exception allowed.

(Continued direct examination)

Salich told Commander Rochefort that he had contacted Mr. Gorin, and that Mr. Gorin had offered him certain moneys.

He asked Commander Rochefort whether or not he should continue to contact Mr. Gorin.

Commander Rochefort told Salich not to contact Gorin more and that if he did he would have Stanley with him. I know Mr. Salich and Mr. Stanley. Mr. Stanley is likewise an investigator with the same office with which Mr. Salich was working. The conversation I related took place, as I recall, in March of 1938.

VIII-A.

The Court erred in admitting the evidence of the Witness Roy Hanna on behalf of the plaintiff as follows:

(Direct Examination continued)

Q. At any time after September of 1937, were you ever present in the office of the Naval Intelligence, San Pedro, when the defendant Salich was likewise present and the small safe to which the Commander of the Office had access, was slightly ajar? No answer either yes or no.

To which objection was made by the defendant Salich upon the ground that it was immaterial and irrelevant and not within the terms of the indictment or bill of particulars. Objection overruled, exception allowed.

Q. Now, do you recall approximately what date this was?

A. I would say it was either September or October. I couldn't give you the date.

Q. Of 1937? [71] A. 1937.

Q. Was anyone else present in the room where this safe was besides Mr. Salich?

A. I was there with Mr. Salich.

Q. And did you leave the room for any length of time.

A. I would say about four or five minutes.

Q. And when you returned, was anyone else present in the room besides Mr. Salich?

A. No one.

Q. Did you observe who was in the room when you returned? A. Yes, Salich was there.

Q. Nobody else? A. Nobody else.

Q. Did you observe the condition of the safe, the small safe, when you returned?

A. The door was opened much wider.

Q. Did you have any conversation with Mr. Salich with respect to that situation?

A. I did not mention it to him.

Defendant Salich moved to strike the testimony of said witness last objected to on the ground that there was no proof that Mr. Salich took anything out of the safe and no proof that his actions were other than as behooved a member of the Naval Intelligence Service in the course of the duties, and that the whole line of testimony was highly prejudicial. Motion denied. Exception allowed.

IX.

The Court erred in denying the motion of defendant Salich to strike the testimony of Witness Roy Hanna as follows:

(Direct Examination continued)

Q. At any time after September of 1937, were you ever present in the office of the Naval Intelligence, San Pedro, when [72] the defendant Salich was likewise present and the small safe to which the Commander of the Office had access, was slightly ajar? Now answer either yes or no.

To which objection was made by the defendant Salich upon the ground that it was immaterial and irrelevant and not within the terms of the indictment or bill of particulars. Objection overruled. Exception allowed.

Q. Now, do you recall approximately what date this was?

A. I would say it was either September or October. I couldn't give you the date. [73]

Q. Of 1937? A. 1937.

Q. Was anyone else present in the room where this safe was besides Mr. Salich?

A. I was there with Mr. Salich.

Q. And did you leave the room for any length of time?

A. I would say about four or five minutes.

Q. And when you returned, was anyone else present in the room besides Mr. Salich?

A. No one.

Q. Did you observe who was in the room when you returned? A. Yes, Salich was there.

Q. Nobody else? A. Nobody else.

Q. Did you observe the condition of the safe, the small safe, when you returned?

A. The door was opened much wider.

Q. Did you have any conversation with Mr. Salich with respect to that situation?

A. I did not mention it to him.

Defendant Salich moved to strike the testimony of said witness last objected to on the ground that there was no proof that Mr. Salich took anything out of the safe and no proof that his actions were other than as behooved a member of the Naval Intelligence Service in the course of the duties, and that the whole line of testimony was highly prejudicial. Motion denied. Exception allowed.

(Cross-Examination)

By Mr. Stone.

... The Commander in charge of the Naval Intelligence Service Office in San Pedro, myself, Mr. Stanley and Mr. Salich all had keys [74] to the office. That was our headquarters for our work as members of the United States Naval Intelligence Service. They had orders to report certain days to the office. If the office was locked for any reason, they were expected to use their keys to go in for that purpose. The office was kept unlocked from eight o'clock in the morning to four o'clock in the afternoon all days of the week, Monday, inclusive of Friday. They were not expected to come in on Saturday morning and type up a report. The orders never included that they had to report Saturday

unless they were so specifically told. There were no orders that I know of that they were not to go to the office on Saturday. The small safe was unlocked when Mr. Rochefort or the officer in charge, Mr. Clayborne, was present. I don't rememeber what day of the week it was on the occasion to which I testified the small safe was open. It was around, September, October, of 1937. That was in the period when Commander Rochefort was in charge of the station. During the two years that Mr. Salich was connected with the Naval Intelligence Service the safe was opened every time the officer in charge came in and opened it. This may have happened three or four times a day, or it may have happened once a day. Commander Rochefort was not present at the time the occurrence to which I testified happened. He was out at the time. He only opened it and stepped out of the office when I was present. That had happened before. I did not say anything to Mr. Salich about this occurrence. I believe Mr. Salich had opened the safe. At that time I believed he had gone to the safe. What he was doing there, I don't know. The safe door was about four or five inches ajar when I left the room on the occasion. I did not examine the safe when I returned to the room. Mr. Salich remained in the room until about 10:30 or about 11:00 o'clock, about an hour and a half after I returned. Shortly after I returned to the room, Commander Rochefort returned. He did not examine the safe in my presence. [75]

Mr. Stone: Your Honor, I should like again to move to strike all testimony of Mr. Hanna with regard to this safe. The matter, as shwon on cross examination, Mr. Hanna didn't examine the safe. He had no reason to believe that Mr. Salich had taken anything from the safe. He said nothing to Mr. Salich about it at the time. There is no possible admission which can be drawn from such testimony, if that was the purpose of the Government in making it, and I believe that it is highly prejudicial and should be stricken, and the jury should be admonished to disregard it.

The Court: The motion will be denied, and in fairness to counsel, possibly the attitude of the Court should be explained in the presence of the jury.

The objections made, gentlemen, seem to the Court to go to the weight of the evidence rather than as to its materiality to the case. It is but an isolated item in possibly a long chain of proof. It certainly is no evidence that any papers were taken out of that desk. It apparently is not being introduced with that purpose in mind. It may seem to you to be evidence for the purpose of illustration to indicate the accessibility of these papers to the Defendant Salich.

The motion to strike will be denied and an exception allowed.

XI.

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney propounded to Witness G. B. Dierst.

Q. Now, Mr. Dierst, referring to Government's Exhibit No. 4 for identification, when was that written up?

A. That was written up on the evening of December 10, 1938. [76]

Q. And these conversations that you have told us about, and also the identification of these various reports, was that at the same time, before or after?

A. They all occurred on December 10th.

Q. At that time, as I understand it, you made a rough memorandum? A. That is correct.

Q. And those are the memorandums that you have been using to refresh your recollection?

A. That is right.

We first made a pencil memorandum and after I had the pencil memorandum made up, or I took down the notes from time to time during the conversation, then I went over it and rewrote the notes in ink while Mr. Salich was over at another desk at a typewriter preparing the statement. After he got through with the statement, or after I had my notes prepared, he came over and asked me to review them. We sat down together and reviewed them, and he made certain corrections in the notes with his own handwriting.

Q. Calling your attention again to Exhibit 4 for identification, is that memorandum in your own handwriting?

A. This is a memorandum in my own handwriting with certain corrections made in it in the handwriting of Mr. Salich.

Mr. Harrison: At this time, if the Court please, we desire to offer this statement in evidence.

The Court: Gentlemen of the jury, it is stipulated between the parties that the Government's Exhibit No. 4 for identification may be now admitted in evidence as to the defendant Salich, but is not applicable to the defendant Mikhail Gorin, and you are instructed to disregard this exhibit in considering the matter as to the two defendants Gorin.

[77]

Whereupon the document referred to was received in evidence and marked "Government's Exhibit No. 4."

Mr. Stone: I think the record should show that we do not consider that Mr. Dierst's statement refers to matters with respect to the national defense, and for that reason I would like to have the record show an objection in that regard.

The Court: The record may show the objection. It is overruled and an exception allowed.

Whereupon the witness read the statement, Government's Exhibit No. 4, the same reading as follows:

GOVERNMENT'S EXHIBIT No. 4

Notes of G. V. Dierst of statements made by Hafis Salich, 12/10/38, and reviewed and corrected by Salich, signed G. V. Dierst. While subject was on Berkeley, Calif. P. D., he was acquainted with one O. R. Griffin who was a former member of Berkeley P. D. and Griffin knew Mr. Troyanovsky, the Russian Ambassador to U. S. Griffin thru

Troyanovsky met Nicholai Aliavdin, Vice Consul for Russia. Griffin introduced Salich to Aliavdin, this being in the latter part of 1935. During the latter part of 1935 and first part of 1936 Salich saw Aliavdin once or twice. Salich came to L. A. in August of 1936 to take present job. Some time during winter of 1936-1937 Aliavdin looked up Salich in L. A. and saw him 3 or 4 times when Aliavdin approached Salich and requested information concerning Jap activities or the Jap Consulate and was turned down. At this time Salich advised Rochefort of Aliavdin's request.

" In Dec. '37 or Jan. '38 Salich met Mikhail Gorin, Gorin having a letter of introduction from Aliavdin. Gorin brought this letter to Salich's apartment at 3333-W. 4th St. and Salich, being out, Gorin left word with Salich's wife that he desired to see Salich.

The following night Salich contacted Gorin at his residence, ([78] 451 South Ardmore St. and they went out together. While they were out, Salich's wife, with whom Salich had been having trouble, came to Gorin's house, forced her way in and searched the front room for Salich, Mrs. Gorin being the only person home. Gorin told Salich that they had investigated his folks in Russia and found that they were alright and that they felt that Salich would be able to help them. He stated that they wanted information about the Japs and that Russia was friendly with U. S. and did not want to do anything that would in any way jeopardize that relationship. Salich told him that no informa-

tion he could obtain about the Japanese would help them, but Gorin explained that there was always a possibility that in event of trouble between the Russians and Japanese that such information might be of assistance and they were interested in Japanese and their international activities. They had 2 or 3 meetings and about this time Salich was having marital trouble, he and his wife separating, so Gorin said he would help him out and gave him \$200 more or less as a gift and to help him out. Thereafter from time to time Gorin gave Salich sums of money, generally about \$200 at a time and totalling about \$1700, the next to last payment being \$500 in Nov. of 1938 when Salich made a property settlement agreement with his wife. He had been paying her \$125 per month and the amount received from Gorin just about took care of the alimony.

Information concerning Japanese activities were furnished to Gorin from time to time, and it was specifically understood between Salich and Gorin that no information would be furnished concerning U. S. It being felt by Salich and Gorin that the Japanese activities were a matter in which U. S. and Russia were both interested and that exchange of information about them would mutually benefit U. S. and Russia.

Salich and Gorin had no specific meeting place, but would [79] get together about every 3 to 5 weeks at places mutually agreed upon. Sometimes Salich would phone Gorin and vice versa. The information was turned over to Gorin both orally

and written and Gorin would take notes on oral information.

Timofeev was vice consul until recently but Salich never met him and never had any dealings with him.

Gorin told Salich on one occasion that he had had an American employed, but had fired him because he was unreliable, and he also said that a similar check was being made on Japanese activities in San Francisco, and Salich saw part of a typewritten report about Ted Yasunaga, or Yasukawa or Yasaqawa and something about the subject being a graduate of Galileo H. S.

Gorin always claimed that his superiors felt that there was more in the navy intelligence about the Japs than they were getting and particularly about who the real Japanese spies in U. S. were, but Salich insisted that Gorin was getting all the information available concerning the Japs. Gorin also stated at one time that Moscow was dissatisfied with the information they were getting and felt that Salich could get more information. He also stated that they felt that something of real interest to the Russians might turn up about the Japs in the future. He also inquired at one time if Salich had any Jap informants who could be developed to furnish Gorin information, but Salich advised him that it would put his informants in a ticklish position and refused to give him any such Japs. Gorin at one time said that money was no object and said he would even pay double what Salich was getting. At another time Gorin told

Salich that if he, Salich, got any extended leave, that he, Gorin, would see that Salich got a trip to Russia, advising Salich that the Russian Government as a part of their propaganda program paid for trips to Russia of members of certain organizations and that it could be arranged for Salich to make one of these trips. [80]

Salich stated that when Gorin first approached him that he, Salich, had talked the matter over with Rochefort and Rochefort told him to see what Gorin had to offer. He told Rochefort at the time of the offer that Gorin had made.

Salich when first approached told Gorin that it was out of the question for he, Salich, to do any independent investigation and that all information furnished would have to come as a result of his investigation with the Navy Intelligence. Gorin also told Salich that Moscow felt he, Salich, was not doing anything wrong as there was a mutual cause in obtaining information about the Japs.

In going over the various reports of the Navy Intelligence records with Salich, he stated that he furnished information from the following reports to Gorin on their last meeting which was the day after Thanksgiving last, on Nov. 25, 1938.

#1145

#1139

#1133

#1132

#1130

#1129

#1116 (This report was not furnished.)

He asked Gorin about Captain Bakesy and Gorin said he knew Capt. Bakesy as he had come to Gorin's San Francisco office. Salich asked Gorin of Bakesy, because he suspected that Bakesy may have been employed by him.

In going over other reports in the Navy Intelligence files Salich made the following comments about the following numbered reports.

#833. He gave the information in this report to Gorin because it concerned the Japanese and if there was a communist among [81] the Japs, then Gorin could contact him direct for information and this would be working towards a common interest. This report was given to Gorin in writing.

#841. He gave this information to Gorin, but does not know whether it was written or oral.

#843. Denies knowing anything about this or giving information to Gorin.

#849. Gave names of Simons and Rayburn to Gorin and asked him whether these parties had been working for Gorin. Gorin had mentioned a Simons in San Diego that was supposed to be studying Japanese and Salich mentioned these names to see if Rayburn and Simons were working for Gorin and doing sabotage work.

#854. No specific recollection about this but that he might have mentioned it to Gorin. Salich states that they had talked about the article in Liberty Magazine discussing Japanese torpedo boats which were supposed to have been converted into fishing boats.

#859. Salich did not furnish Gorin with the address of Simons.

#861. No specific recollection.

#889. Salich states he did not remember furnishing Shively's name to Gorin.

#897. Salich gave this information to Gorin, but does not know whether it was written or oral.

#967. Salich merely gave Gorin the name of Hilda Cary and some of her personal history, such as the fact she had been married to a Mexican, also her address. It was then up to Gorin to make a contact with her if he so desired. (May have given a written report or copy).

#973. Salich gave Gorin information about Louis Ritchie as a possible Japanese spy, because he was capable of doing anything [82] for the Japanese and might play both sides.

#1066. Salich and Gorin had agreed that if they ran into anything against the U. S., that they would work together and so Salich asked Gorin about Hillman and Kovac and Gorin said the Russians had no known communists working and that this was all a lie.

Other reports mentioned by Salich to Gorin were as follows:

#1152—no comment.

#1110—the following comment appears after that: "Told to Gorin orally, but did not mention ships.

#1104—mentioned to Gorin.

#1088. Told about Herman Schwinn—when this was mentioned to Gorin he told Salich to lay off the Germans as Moscow was not interested and that this was covered by a separate division.

#1081. Mentioned to Gorin, may have given written report.

#1070.

#518 is information received from Gorin.

#403 is information received from Gorin.

Salich feels that at least \$100 of the money he received from Gorin was spent on navy business.

(End of Government's Exhibit No. 4.)

XII.

The Court erred in admitting evidence in behalf of plaintiff as follows:

Question of Plaintiff's attorney propounded to Witness C. V. Dierst:

Q. You stated that while you were making up this memorandum that Mr. Salich sat down to a typewriter and wrote up something?

A. He did.

Q. And after he had completed the typewriting, did he hand you anything? [83] A. He did.

Mr. Harrison: I will ask this to be marked for identification, Mr. Clerk.

(The document referred to was marked Government's Exhibit No. 7 for identification").

By Mr. Harrison:

Q. I am now showing you Government's Exhibit No. 7 for identification, and ask you if you recognize that document.

A. (Examining Document) I do.

Q. And what is it?

A. This is the typewritten statement which Mr. Salich typewrote while I was preparing the notes which I just read.

Q. And did Mr. Salich sign that document?

A. He signed it the following day.

Q. And in whose presence.

A. He signed it in the presence of Mr. Hanson and myself and Mr. Miller.

I might say, in connection with that, he had already signed the statement on Sunday morning prior to my arrival at the office; that I went in to where he was and asked him whether he had signed the statement, showed it to him, and he told me that he had, and acknowledged that that was his signature on the bottom, and it was his signed statement, that he had voluntarily signed it.

Mr. Harrison: If the Court please, we now offer this in evidence against the defendant Salich only.

Mr. Stone: May the record show the same objection in regard to this statement, your honor, that we made in connection with the other one; that it does not concern matters affecting the national defense?

The Court: The objection will be entertained, overruled, and an exception allowed.

The document referred to was received in evidence and [84] marked "Government's Exhibit No. 7."

Whereupon Mr. Harrison read said exhibit to the jury, said Government's Exhibit No. 7 reading as follows:

GOVERNMENT'S EXHIBIT No. 7

The following is account of the various events that led up to this case and my sincere and honest story as to what transpired during my relationship with Gorin:

Gorin came to my house at 3333 W. 4th Street, Los Angeles during the fall of 1937 and talked to my wife Velma through the apartment house switchboard. He stated to her that he had a letter for me from Aliavdin (I guess that is how it is pronounced).

Eventually I contacted Gorin at his house one evening after having had a violent quarrel with my wife. She threatened that she would follow me, so Gorin and I left his house immediately to go somewhere for a cocktail. Velma arrived there shortly thereafter and created quite a scene with Gorin's wife, demanding entrance and looking for me. According to Gorin as told him by his wife, Velma nudged her way in the house and acted quite obstreperously. During that meeting Gorin stated that his government was very much interested in obtaining information concerning the Japanese in this area and emphasized that they were quite friendly to USA and that they wanted no information of any kind that would be considered against the best interests of this country. He suggested that,

if necessary, he was quite prepared to pay money to which I answered negatively explaining that I would not consider it ethical or right to accept any money. He asked me to think the matter over, and that we would meet again for lunch sometime soon. Accordingly we had lunch together at Perino's one day the outcome of which was that I again insisted that I could not consider working for him and accept any money but that if at any time I came into possession of information that concerned Japanese activity against the USSR, I would let him know.

[85]

In the meantime, after many violent squabbles and quarrels with my wife we separated and in February 1938 I moved to my present address. I agreed to pay her \$125 per month, \$30 of which I was to pay for her car. I was also to deduct her gasoline expense from her allowance. During the next month or two I realized that I was finding it difficult to live on \$125 which was my share. During one of the later contacts that I had with Gorin (these contacts were of purely social nature, meeting for cocktails or lunches) I happened to mention to him about my plight with respect to keeping up with the payments to my wife of \$125 a month, whereupon he stated that he realized the difficulty that I had in living on my reduced salary and asked why didn't I let him help me with those payments. At this point he reiterated his previous assurance that they had nothing against this country, that this country was friendly to them and they

friendly to us and that the only thing they were interested in getting was information concerning the Japanese. To my argument that nothing that I could possibly get for them concerning the local Japanese would be of any value to Russia, he answered that there was always a possibility of some local angle having to do with possible Japanese espionage in Russia. He again pointed out that the Japanese were our common potential enemy and it was as much in our interests to see that someone else also exerted some effort against them.

I saw that there was reason to his argument and agreed to furnish him with information that came to my hands in which I thought he would be interested in. This information was mostly concerning the Japanese. On one or two items of information that I furnished and that did not involve any Japanese I gave verbal explanation to Mr. Dierst. Sometime in the past few months Gorin asked me how I stood with my wife and when informed that I still kept on paying her the \$125 per month he offered that I give her \$500 and get rid of the annoying payments once and for all. He did this, but in the [86] settlement with my wife I discovered the \$500 did not cover the entire settlement sum including the bills which she had incurred and which I agreed to pay, I borrowed additional \$250 from California Bank on Terminal Island. A friend acted as a co-signer on this note. Altogether I received \$1,700 from Gorin, \$200 of which is still in my possession.

After two or three months of my relationship with Gorin he told me that his superior officers were extremely dissatisfied with information I was furnishing. They said to him that what they were getting was way below their expectations. I said to Gorin then that I regretted that there was nothing more I could do, but that inasmuch as I could not satisfy them perhaps it would be better if they stopped furnishing me with money. He said that I shouldn't feel that way about it and that sooner or later there might fall into my hands some information concerning the Japanese which might be of real interest to them, and that he did not wish to discourage me at all. Just as a bythought, at one time during my association with him, I told him that I appreciated his financial assistance and that when my trouble with my wife was over I intended to repay him.

Conscientiously and honestly I did not think that my actions, aside from being highly unethical, were inimical to the best interests of the United States, to which country I am extremely grateful for what it did for me and which country's citizenship I value. This was understood during my conversations with Gorin when I told him repeatedly that I felt very patriotic about USA and that under no circumstances would I do anything against this country. His reply to this was that he is authorized to assure me again that they realized my patriotic feeling for USA and that there was nothing for me to worry about in that respect because they enter-

tained no other feeling but that of friendship and respect for this country and that they certainly did not intend to do anything against USA. He stated that [87] after all the USA permitted them to send their aviation and other engineers to study in American plants and brought out other reasons why they had no desire to work against us here.

I sincerely state that at no time did I furnish Gorin any information which in my opinion would harm this country; on the contrary, I saw some reason to Gorin's argument that we had common cause, and by helping them I would also be indirectly helping our own cause. At no time was I ever in a position to obtain anything of secret nature about the U. S. Navy, nor about the secret armament, aircraft plants, etc., nor did I have any intention of turning such information over to Gorin should I have been in a position to obtain such information. I therefore do not conscientiously feel that I have violated any of the provisions of our espionage laws, but feel keenly disgrace of violation of ethics, that is, divulging to other sources information as innocuous as I felt it was. I likewise admit my weakness in answering the temptation of financial assistance offered me to assist me in my domestic difficulty. I might add that during one of my attendances of Naval Reserve Officers affairs I came into possession of some confidential mimeographed Naval publication, which was distributed to everyone present, which never left my possession, and which I had no intention of turn-

ing over to anyone. I respectfully ask that it be noted that at no time did I feel I was doing anything criminal against the country that adopted me and have every desire to cooperate (and have done so) with the officers investigating this place.

(Then in longhand): Above is given voluntarily and signed without fear of intimidation and without any promise of reward or immunity.

HAFIS SALICH

December 11, 1938. [88]

Witnesses:

J. H. HANSON,

Special Agent, F. B. I.

S. R. MILLER,

Special Agent, F. B. I.

G. V. DIERST,

Special Agent, F. B. I.

810 South Spring Street

Los Angeles, California.

XIII.

The Court erred in denying motion of defendant Salich to strike the testimony of the Witness John H. Hanson as follows:

Q. Now, at this time, was there any discussion in any of this conversation, or did Mr. Salich refer to any statute or discuss with you any statute?

A. Yes. Mr. Salich stated that he did not believe that he had done anything wrong in furnishing this information to Mr. Gorin. He said that he had carefully studied the United States Espionage

Statute and that he was positive in his own mind that he had not violated that law and, in fact, on December 11, when he was still in the office, and naturally he was wondering what was going to happen to him, what—whether the United States Attorney was to authorize prosecution, I gave him the United States Code Book, the Code Annotated, and he read over the Statute himself. There was one particular clause in there that impressed itself on his mind. He thought possibly because of that particular wording that he might have done something.

Q. Was it a book similar to the one I have in my hand (indicating)?

A. It was a large book.

Q. A large book? A. Yes.

Q. Do you recall, offhand, what statute he read over in your presence? [89]

A. No. All I can say is the espionage statute. He said the wording in the statute of "detriment to the United States," might be the reason why the United States Attorney would authorize prosecution.

Q. Now, was this conversation that you had on or before the time he had typed or signed a written instrument?

A. All of the conversation that I have related, excepting about reading the statute book, was prior to the time that he had written up his own statement. He started writing that late on the afternoon and evening of December 10. He actually looked at the code book on the 11th.

Q. But had he had any discussion with you with respect to the statute prior to the time that he actually read the code book itself? A. Yes.

Q. What date?

A. That was on December 10.

Q. Will you explain to the jury as to what statute books, what code books, were referred to whether it was a Naval Code book, or whether it was the United States Statute?

A. The book that I referred to contains the United States Statutes.

Q. And the one that Mr. Salich on December 10, 1938, told you that he had read the statute pertaining to espionage, did that pertain to the United States Statutes?

A. The United States Statutes, that is right.

Q. You had a discussion of the general nature of those statutes? A. Yes.

Mr. Pacht: I now move to strike the whole of the conversation just related by the witness with Mr. Salich on behalf of the [90] defendants Gorin, and each of them, upon the ground that this conversation occurred after the termination of the alleged conspiracy, constitutes hearsay as to these moving defendants, and further, that there has been no proof of any conspiracy, and when your Honor has ruled upon that, I would like to make a specific motion as to a particular part of this conversation.

The Court: The motion to strike will be denied.

Mr. Pacht: May I be allowed an exception?

The Court: An exception.

Mr. Pacht: I now move to strike that part of the conversation related by Mr. Hanson as to what was done and said by Mr. Hanson and by Mr. Salich with respect to the United States Annotated Code, and/or the Espionage Statute, his interpretation of it, or what he thought with relation to that statute.

The Court: Gentlemen of the jury, as to that portion of the testimony of this witness having to do with his examination of the United States Code or the United States Statute on this particular occasion, you shall disregard insofar as the defendants Gorin are concerned.

Mr. Stone: May I join in that, your Honor, on behalf of the defendant Salich, upon the ground that it does not constitute an admission and has no tendency to prove or disprove any issue in this case?

The Court: As to the defendant Salich the motion will be denied, it being in the Court's mind one of the elements having to, possibly, with intent. An exception is allowed.

XIV.

The Court erred in denying the motion of defendant Salich to strike the testimony of Elias M. Zacharias as follows:

Q. Commander, have you had under your supervision the defendant Salich as investigator? [91]

A. I have.

Q. And what were his duties as such investigator?

A. To collect information or data on individuals suspected of obtaining or attempting to obtain information relating to the Naval establishment. Information on individuals engaging in or making preparations to engage in sabotage of the Naval establishment, or activities directly connected with the defense efforts of that Naval establishment. Individuals engaged in or attempting to engage in subversion of personnel, looking to the nullification of the defense efforts of the Naval establishment, or actual immobilization thereof.

Mr. Pacht: I move to strike out the whole of the answer of the witness upon the ground that the answer as given by the witness has added to, and is an attempt to add to, the provisions of the Espionage Act, as set forth in Sections 31, 32, and 34, Title 50.

The Congress itself has made no such specifications in the statute, has not given such a broad definition of the term "national defense" as Commander Zacharias in his answer has indicated, and that the opinion and conclusion of Commander Zacharias as to the purpose of the Act and as to its provisions and as to the work which any agent or employee working under Commander Zacharias is incompetent, irrelevant and immaterial for any purpose in this case.

Mr. Stone: May I join in that objection, your Honor.

The Court: The motions on behalf of all of the defendants will be denied.

Gentlemen: The law in this case you will take from the Court. Counsel for the Government or the defendants, or the witness, or anybody else, has no power to read anything into the statutes of the United States. At the proper time and under the proper circumstances, in instructing this jury, the Court will define the term "national defense," and will give you explicit instructions as to [92] the law involved. This testimony is being taken, not to instruct you as to what the law is, but simply as to the fact of what the men were directed by their superior officer to do, what the scope of their activities was. It is merely a fact.

The Court: Exception to all concerned.

XV.

The Court erred in admitting evidence of the Witness Elias M. Zacharias on behalf of the plaintiff as follows:

There was a time when I talked in the presence of Mr. Salich relative to his duties and the functions of the office. I recall distinctly two occasions. The first was at a meeting in the office of the Assistant District Intelligence Officer at San Pedro, attended by individuals connected with the Naval Intelligence Service, among them Mr. Salich, shortly after I assumed my duties as District Intelligence Officer. There was present besides Mr. Salich, Lt. Claiborne, Mr. Stanley and certain members of the Intelligence Service. Mr. Hanna was not present.

Q. Will you state what you said at that time, concerning the nature of the work that your investigators were doing?

Mr. Stone: To which I object, Your Honor, upon the ground that it has no tendency to prove or disprove any of the issues involved in this action.

The Court: The objection will be overruled. Exception allowed.

The Witness: At that time I recounted the situation surrounding the espionage trial in New York recently completed. I told of the activities connected with that case, with which I was directly connected four years previously, and I emphasized to that group the vulnerability of information for the purpose of impressing upon them the necessity for properly safeguarding information. It was at that [93] time that I stressed the necessity of keeping from anyone information developed, and pointed out that human beings have the frailty of desiring to tell what they had done, or what they had accomplished. And it was on that occasion, to impress this fact upon them, that I made the remark, after stating that they should not even tell things of this nature to their wives or families, that I said, "You must get your glory out of the accomplishment and," as has already been testified in the court, I did make the statement that "intelligence work, like virtue, is its own reward."

(Witness continues) I have given the substance of the first statement I made in the presence of Mr. Salich.

XVI.

The Court erred in denying the motions of defendant Salich to strike the testimony of Elias M. Zacharias given on behalf of plaintiff as follows:

There was a time when I talked in the presence of Mr. Salich relative to his duties and the functions of the office. I recall distinctly two occasions. The first was at a meeting in the office of the Assistant District Intelligence Officer at San Pedro, attended by individuals connected with the Naval Intelligence Service, among them Mr. Salich, shortly after I assumed my duties as District Intelligence Officer. There was present besides Mr. Salich; Lt. Claiborne, Mr. Stanley and certain members of the Intelligence Service. Mr. Hanna was not present.

Q. Will you state what you said at that time, concerning the nature of the work that your investigators were doing?

Mr. Stone: To which I object, your Honor, upon the ground that it has no tendency to prove or disprove any of the issues involved in this action.

The Court: The objection will be overruled. Exception allowed. [94]

The Witness: At that time I recounted the situation surrounding the espionage trial in New York recently completed. I told of the activities connected with that case, with which I was directly connected four years previously, and I emphasized to that group the vulnerability of information for the purpose of impressing upon them the necessity

for properly safeguarding information. It was at that time that I stressed the necessity of keeping from anyone information developed, and pointed out that human beings have the frailty of desiring to tell what they had done, or what they had accomplished. And it was on that occasion, to impress this fact upon them, that I made the remark, after stating that they should not even tell things of this nature to their wives or families, that I said, "You must get your glory out of the accomplishment and," as has already been testified in the court, I did make the statement that "intelligence work, like virtue, is its own reward."

(Witness continues) I have given the substance of the first statement I made in the presence of Mr. Salich.

Mr. Pacht: If the Court please, I move to strike this testimony, particularly because the Commander has brought into his answer a prosecution under the Espionage Act and has brought before this jury a prosecution under the Espionage Act which he says took place in New York that has injected into this case issues not presented by the indictment and is prejudicial to the defendants, so that the jury is bound to speculate or may speculate upon the outcome of that case in New York.

Whereupon the defendants moved to strike said testimony upon the grounds that the answer is opinion testimony upon a subject upon which opinion testimony is not permitted, and upon the ground that the duties, the powers and the manner of

functioning of the office of Naval Intelligence is a matter which is subject to and [95] governed by written regulations of the Navy Department.

Motion denied. Exceptions allowed.

XVII.

The Court erred in admitting in evidence document known as report #833 and designated Government's Exhibit No. 5(a) to which offer objection was made on behalf of the defendant Salich upon the following grounds:

1. That no proper foundation has been laid for the introduction of said writing, for the reason that it has not been shown, and there is no evidence to prove, that said report, or any part thereof, relates to or is connected with the national defense of the United States.

2. That said report on its face shows that it is not a part of and is not connected with and does not relate to the national defense of the United States as that term is used in Sections 31, 32 and 34 of the Espionage Act.

3. That said report is not an instrument, writing, or document connected with or relating to the national defense as that term is used in Sections 31, 32 and 34 of the Espionage Act.

4. That said report on its face shows that it is but a communication by one officer of the United States Navy to another officer of said Navy reporting certain information acquired by said reporting officer concerning the acts and conduct

of certain persons in the United States, and that it is not connected with nor does it relate to the national defense of the United States as that term is used in the Espionage Act.

5. That said report shows on its face that it is but the conclusion and opinion of the reporting officer relative to the acts and conduct of a certain individual or individuals and the transmission of said reporting officer to another officer of such conclusions and opinion, and that it is not anything connected with [96] the national defense or relating to the national defense as that term is used in the Espionage Act under which this prosecution is being had.

6. That the introduction of said report in evidence would have the effect of making the judgment, opinion and conclusion of an officer of the United States Navy a standard whereby to determine the conduct of the defendants and other persons dealing with the United States Navy and permitting said officer to in effect legislate and create criminal statute.

7. That the introduction in evidence of said report would be to give to a regulation of the United States Navy relative to information acquired by its officers and employees the effect of a criminal statute, all in violation of the Fifth and Sixth Amendments of the Constitution of the United States.

Said objection was overruled and exception allowed.

Said Exhibit No. 5(a) is in words and figures as follows:

GOVERNMENT'S EXHIBIT No. 5(a)

#833

Memo for DIO

Subject: Activities of Japanese.

Enclosure: (A) Memo of DIO dated 31 August 1938.

1. Very little information could be obtained by this office on the subject mentioned in Enclosure (A). Three American-born Japanese, George Ohaski, Paul Nakadate and George Suzuki, all resigned very recently from the J. A. C. L., because they were accused of indulging in communist activities. Dr. Miki Nakadate, elder brother of Paul Nakadate, is still in Los Angeles and is very strong in the Los Angeles branch of the J. A. C. L. According to the informant there is news in Los Angeles relative to any trouble in San Diego, and the Rafu Shimpō stated, the only information they had [97] was of the resignation of the three above mentioned people from the J. A. C. L., due to communist activities.

2. This office is of the belief that the informant could discover more concerning this matter but he lacks the energy and the ingenuity to get it.

H. deB. CLAIBORNE.

XVIII.

The Court erred in admitting in evidence a document known as report #841 and designated Gov-

ernment's Exhibit No. 5(b) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 260 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is herein set forth in full.

XIX.

The Court erred in admitting in evidence a document known as report #889 and designated Government's Exhibit No. 5(c) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 261 of this printed record.] [98]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honor-

able Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XX.

The Court erred in admitting in evidence a document known as report No. 1145 and designated Government's Exhibit No. 5(d), to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 262 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of this Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXI.

The Court erred in admitting in evidence a document known as report No. 1139 and designated Government's Exhibit No. 5(e) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled

and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 263 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore [99] made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXII.

The Court erred in admitting in evidence a document known as report #1133 and designated Government's Exhibit No. 5(f) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 263 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXIII.

The Court erred in admitting in evidence a document, known as report No. 1132 and designated Government's Exhibit No. 5(g) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 264 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

[100]

XXIV.

The Court erred in admitting in evidence a document known as report #1130 and designated Government's Exhibit No. 5(h) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such refer-

ence. [Set forth at page 264 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXV.

The Court erred in admitting in evidence a document known as report No. 1129 and designated Government's Exhibit No. 5(i) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 265 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXVI.

The Court erred in admitting in evidence a document known as report #897 and designated Government's Exhibit No. 5(k) to which [101] offer

objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 266 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXVII.

The Court erred in admitting in evidence a document known as report #1104 and designated Government's Exhibit No. 5(1) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 268 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honor-

able Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXVIII.

The Court erred in admitting in evidence a document known as report No. 1081 and designated Government's Exhibit No. 5(m) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which [102] said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 269 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXIX.

The Court erred in admitting in evidence a document known as report #570 and designated Government's Exhibit No. 6(a) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and

exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 270 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXX.

The Court erred in admitting in evidence a document known as report No. 560 and designated Government's Exhibit No. 6(b) to which offer objection was made on behalf of the defendant Salich upon grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed [103] to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 271 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXI.

The Court erred in admitting in evidence a document known as report #548 and designated Government's Exhibit No. 6(c) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII, which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 274 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXII.

The Court erred in admitting in evidence a document known as report #546 and designated Government's Exhibit No. 6(d) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such refer-

ence. [Set forth at page 275 of this printed record.]

[104]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXIII.

The Court erred in admitting in evidence a document known as report No. 536 and designated Government's Exhibit No. 6(e) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 275 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXIV.

The Court erred in admitting in evidence a document known as report #535 and designated Gov-

ernment's Exhibit No. 6(f) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 276 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed and by order of the Honorable Circuit Court of Appeals heretofore [105] made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXV.

The Court erred in admitting in evidence a document known as report #534 and designated Government's Exhibit 6(g) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 277 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the

Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXVI.

The Court erred in admitting in evidence a document known as report #532 and designated Government's Exhibit No. 6(h) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 277 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full. [106]

XXXVII.

The Court erred in admitting in evidence a document known as report #530 and designated Government's Exhibit No. 6(i) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled

and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 277 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXVIII

The Court erred in admitting in evidence a document known as report #529 and designated Government's Exhibit 6(j) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 278 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXIX

The Court erred in admitting in evidence a document known as report #528 and designated Government's Exhibit 6(k) to which [107] offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 278 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXX

The Court erred in admitting in evidence a document known as report #525 and designated Government's Exhibit No. 6(1) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 279 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXXI

The Court erred in admitting in evidence a document known as report #519 and designated Government's Exhibit No. 6(m) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set [108] forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 280 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXXII

The Court erred in admitting in evidence a document known as report #514 and designated Government's Exhibit No. 6(n) to which offer objection

was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 280 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXXIII

The Court erred in admitting in evidence a document known as report #507 and designated Government's Exhibit No. 6(o) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 281 of this printed record.] [109]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made

and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXXIV

The Court erred in admitting in evidence a document known as report #505 and designated Government's Exhibit 6(p) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 284 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXXV

The Court erred in admitting in evidence a document known as report #504 and designated Government's Exhibit 6(q) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words

and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 284 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and [110] by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXXVI

The Court erred in admitting in evidence a document known as report #503 and designated Government's Exhibit 6(r) to which offer objection was made on behalf of the defendant Salieh upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference [Set forth at page 285 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXXVII

The Court erred in admitting in evidence a document known as report #495 and designated Government's Exhibit No. 6(s) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 287 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

[111]

XXXXVIII.

The Court erred in admitting in evidence a document known as report #489 and designated Government's Exhibit No. 6(t) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said

exhibit is herein incorporated by such reference.
[Set forth at page 288 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXXIX.

The Court erred in admitting in evidence a document known as report #482 and designated Government's Exhibit No. 6(u) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 289 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

L.

The Court erred in admitting in evidence a document known as report #480 and designated Gov-

ernment's Exhibit No. 6(v) to which [112] offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 289 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LI

The Court erred in admitting in evidence a document known as report #479 and designated Government's Exhibit 6(w) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 291 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honor-

able Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LII

The Court erred in admitting in evidence a document known as report #477 and designated Government's Exhibit No. 6(x) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said [113] objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 291 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LIII.

The Court erred in admitting in evidence a document known as report #472 and designated Government's Exhibit No. 6(y) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words

and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 291 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LIV.

The Court erred in admitting in evidence a document known as report #469 and designated Government's Exhibit No. 6(z) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore [114] filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 292 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LV.

The Court erred in admitting in evidence a document known as report #466 and designated Government's Exhibit No. 6(aa) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 292 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed; and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LVI.

The Court erred in admitting in evidence a document known as report #465 and designated Government's Exhibit No. 6(bb) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and

said exhibit is herein incorporated by such reference. [Set forth at page 293 of this printed record.]

[115]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LVII.

The Court erred in admitting in evidence a document known as report #439 and designated Government's Exhibit No. 6(cc) to which offer objection was made on behalf of the defendant Saich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 293 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LVIII.

The Court erred in admitting in evidence a document known as report #435 and designated Government's Exhibit No. 6(dd) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 294 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, [116] and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LVIX.

The Court erred in admitting in evidence a document designated Government's Exhibit No. 3 to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by

such reference. [Set forth at page 295 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

LX.

The Court erred in admitting evidence of Witness Henry deB. Claiborne on behalf of the plaintiff as follows:

I had a conversation with Mr. Salich relative to the manner in which he would be paid, which occurred approximately the 30th of June when I drew his first check. I am fairly certain Mr. Stanley was present.

Question by attorney for plaintiff:

Q. What was said relative to the method of payment at that time?

The defendant Salich objected upon the ground that it does not prove or disprove any allegation in the indictment. Objection overruled. Exception allowed.

A. I do not recall the exact words, but, in substance, I stated that the object of this was not to connect the investigators directly with the office or with my name. [117]

LXI.

The Court erred in admitting evidence of the Witness H. deB. Claiborne on behalf of the plaintiff as follows:

I was present at a conversation where the defendant Salich was also present, and where the confidential nature of the work was mentioned. That was at the meetings of the group held at San Pedro, and I recall a particular meeting some time in the summer of 1938. There were present Commander Zacharias, Mr. Stanley, Mr. Salich and several United States Naval Reserve Officers.

Q. Now what did you, if anything, say at that time relative to the confidential nature of the work?

To which the defendant Salich objected upon the ground that it has no tendency to prove or disprove any of the issues involved in this action and upon the further ground that it is opinion testimony upon a subject upon which opinion testimony is not permitted and upon the ground that the duties, the powers, and the manner of functioning of the Office of Naval Intelligence is a matter which is subject to and governed by the written regulations of the Navy Department. The objection was overruled and exception allowed.

A. I particularly recall reading several paragraphs from a book called "The Reserve Officers Manual." One of these paragraphs warned any officer from writing or publishing anything concerning the Navy without first submitting it to the Navy Department.

At the end of this paragraph was a reference to the United States Navy Regulations, paragraph 113. That reference was read, but the paragraph of the United States Navy Regulations itself was not read.

Q. Was anything else said about the confidential nature of the work by you at that time when Salich was present?

A. After that paragraph from the Reserve Officers Manual was read, Commander Zacharias took up the point of the confidential nature of the work.

[118]

Q. And that is what was covered by his testimony in this case?

A. That is correct.

Q. Is that the only occasion where you were present in which there was any discussion concerning the confidential nature of the work of the Naval Intelligence at which Salich was present?

A. No.

Q. When did such an occurrence—

A. (Interrupting) At practically every meeting of the Intelligence group some mention was made of the confidential nature of the work.

LXII.

The Court erred in denying the motion of defendant Salich for a directed verdict which said motion was made at the close of the Government's case and was in words and figures as follows:

The defendant Hafs Salich respectfully moves this Honorable Court to direct a verdict of acquit-

tal in favor of the defendant Hafis Salich upon each and every count of the indictment, and upon the following grounds and each of them:

First Count

(1) The first count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.

(2) The evidence introduced on behalf of the Government on the first count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.

(3) The evidence introduced by the Government fails to show that the information obtained concerns or affects the national defense.

(4) The evidence fails to show that the defendant Hafis [119] Salich obtained the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

(5) The evidence fails to show that the defendant Hafis Salich obtained the said information with the purpose of obtaining information affecting the national defense.

Second Count

(1) The second count of the indictment fails to state facts sufficient to constitute a penal offense

by the defendant Hafis Salich against the United States.

(2) The evidence introduced on behalf of the Government on the second count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.

(3) The evidence introduced by the Government fails to show that the information transmitted and communicated concerns or affects the national defense.

(4) The evidence fails to show that the defendant Hafis Salich transmitted and communicated the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

(5) The evidence fails to show that the defendant Hafis Salich transmitted and communicated the said information with the purpose of transmitting and communicating information affecting the national defense.

Third Count

(1) The third count of the indictment does not state facts sufficient to constitute a penal offense against the United States by the defendant Hafis Salich.

(2) The evidence introduced on behalf of the Government [120] is insufficient to support a conviction of the defendant Hafis Salich on the third count of the indictment.

(3) The evidence fails to show an agreement or conspiracy between Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin to communicate or transmit, one to the other, information which affects the national defense.

(4) The evidence fails to show that the defendants Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin conspired to transmit or communicate information, one to the other, with intent or reason to believe that the said information was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

LXIII.

The Court erred in admitting in evidence on behalf of the plaintiff, Government's Exhibit No. 8 to the introduction of which defendant Salich objected upon the ground that it was immaterial and did not tend to prove or disprove any issue in the case. Objection was overruled and exception allowed. Said exhibit is in words and figures as follows:

August 19, 1938

Mr. Hafis Salich

Berkeley Police Department

Berkeley, California

Dear Salich:

I talked with Commander H. C. Davis, Intelligence Officer, Headquarters, 11th Naval District, this morning (he had been away for a few days)

and he accepted my recommendation of you for the position which he has in the Los Angeles area. The salary will be \$250 per month and \$1000 per year expenses. You may have the job just as soon as you can report to him for work—the sooner the better. [121]

I am writing a letter to Chief Greening and am enclosing a copy for your information. Please do not tell anyone in Berkeley excepting the Chief and the City Manager as any information that might connect your leave of absence with me or the Government would probably destroy your usefulness.

I suggest that you make arrangements as soon as possible to see Commander Davis at the 11th Naval District Headquarters, Third Floor, as soon as convenient. I am leaving on vacation for two weeks this coming Friday, so if I am not here, go to him directly. You can usually see him any morning, and most afternoons excepting Saturday or Sunday.

With best of luck, I am, sincerely,

GEORGE A. BRERETON.

LXIX.

The Court erred in allowing the objection of counsel for plaintiff to the following question asked by counsel for defendant Salich of the Witness Hafis Salich as follows:

Q. Did you at any time discuss with Mr. Aliavdin your work with the Naval Intelligence Service or the fact that you were connected with it?

To which question the Government objected on the ground that it was hearsay and did not tend to prove any of the issues in the case.

Objection sustained. Exception allowed.

LXX.

The Court erred in refusing to admit evidence on behalf of the defendant Salich designated as defendant Salich's and Gorin's Exhibit A, being an article in Ken magazine, Vol. 1, No. 1, April 7, 1938, on Page 40 to which offer the Government objected upon the ground that it was incompetent, irrelevant, and immaterial [122] and did not tend to establish any of the issues in the case. Said objection was sustained and exception allowed. Said designation of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th of June, 1939, which said stipulation and order is hereinafter set forth in full.

LXXI.

The Court erred in denying the motion of defendant Salich for a directed verdict as to each and every one of the counts of the indictment upon the grounds assigned and given and stated to the Court in the motion for directed verdict made at the close of the Government's case and as hereinabove set forth in Assignment of Errors No. LXII, and which said motion was denied and exception allowed.

LXXII.

The Court erred in refusing to give to the jury the following Instruction XII requested by the defendant Salich.

“The fourth element which must be proved to you beyond a reasonable doubt for a conviction of the defendant Hafis Salich on the first count of the indictment is that the defendant Hafis Salich obtained the information mentioned in Instruction IX, if you find that he did so, with intent or reason to believe that that information was to be used to the injury of the United States and the advantage of the Union of Soviet Socialist Republics. (1) This intent the Government must prove to you as a fact; but intent can be proved by facts and acts from which it may be inferred. If the inferences from proven facts and acts are as consistent with an innocent as with a guilty intent, the point is not proved. But on the other hand, if they exclude every hypothesis except that of guilt, the point is proved. In considering these facts and acts, [123] and the inferences drawn from them, you should consider whether or not there are any circumstances brought out in the evidence in this case which are consistent with some intent other than that this information be used to the injury of the United States and the benefit of the Union of Soviet Socialist Republics. You should consider likewise the character of the information here in question—whether or not it is susceptible to use by the Union

of Soviet Socialist Republics in a manner injurious to the United States; whether or not the defendant Hafis Salich knew facts from which he concluded, or reasonably should have concluded, that this information could be used by the Union of Soviet Socialist Republics in a manner which would injure the defense of this nation in time of war.

(2) While it is a fundamental rule that men are presumed to intend the natural consequences of their acts, yet this presumption cannot prevail in the face of positive proof of a specific intent different from that required by the statute. When such evidence is present, it devolves upon the Government to present affirmative evidence of the existence of the required unlawful intent."

LXXIII.

The Court erred in refusing to give to the jury the following Instruction X requested by the defendant Salich:

The second element which must be proved to you beyond a reasonable doubt for a conviction of the defendant Hafis Salich on the first count of the indictment is that the information obtained by him, if you find that he obtained any, relates to the armed defense of the United States so closely that the ordinary reasonable man would immediately perceive that its disclosure would directly endanger the armed defense of this nation in time of war. In determining this question you should consider

the content of that information; whether or not it relates to any military works of the United States, such as navy yards, or forts, or munitions [124] centers, or any property which is prepared for military use in time of war. You should likewise consider the possible uses to which such information could be put by another nation in making an armed attack on this country; whether or not the possession of such information by a foreign nation would endanger the success of our armed forces in time of war in their task of defending our shores; and whether or not the fact of such danger from the disclosure of that information would be immediately apparent to the ordinary reasonable man.

[125]

LXXIV.

The Court erred as to the prejudice of defendant Salich in instructing the jury as follows, to-wit:

You are instructed that the law requires only that the Government prove either an intent or a reason to believe that the information was to be used either to the injury of the United States or to the advantage of the foreign nation—in this case, the Union of Soviet Socialist Republics. Hence, it will be sufficient to satisfy the requirements of the law if, for example, the Government proves to you beyond a reasonable doubt that both Salich and Gorin had reason to believe that the information disclosed was to be used to the advantage of Russia. In such case, you would be entitled to find that each

defendant had the criminal intent specified in the statute:

The intent or purpose of a person is from its very nature a matter which has to be proved by circumstantial evidence. It is obvious that it is impossible to examine into the mind of the person while he is committing an alleged crime to ascertain just what was his intent. It is also true that if a person is about to commit a crime, or during the course of committing a crime, he avoids as far as possible revealing what his intentions are. The explanation which the defendant makes or what was his intent even though quite plausible, is not conclusive as to just what was his intent.

This intent the Government must prove to you as a fact; but intent can be proved by facts and acts from which it may be inferred. If the inferences from proven facts and acts are as consistent with an innocent as with a guilty intent, the point is not proved. But on the other hand, if they exclude every hypothesis except that of guilt, the point is proved. In considering these facts and acts, and the inferences drawn from them, you should [126] consider whether or not there are any circumstances brought out in the evidence in this case which are consistent with some intent other than that this information be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. You should consider likewise the character of the information here

in question—whether or not it is susceptible to use by the Union of Soviet Socialist Republics, and whether or not the Defendant Hafis Salich knew facts from which he concluded, or reasonably should have concluded, that this information could advantageously be used by the Union of Soviet Socialist Republics.

In this connection you are not to be governed solely by any explanations given by any defendant as to his intent, but you shall look to all of the evidence, circumstantial or otherwise, in arriving at what was the intent or purpose of said defendant as charged in the indictment. I further charge you that the defendant's interpretation of what he understood the law to be with respect to whether or not his acts were contrary to the statute is not conclusive. It is not what the defendant believed his acts amounted to so far as his guilt or innocence is concerned, but you are to consider all of the evidence and the law as I instruct you as to whether or not the acts of any defendant may or may not have violated the statutes governing the trial of this case.

An honest but mistaken belief on the part of any defendant that what he was doing was lawful, even though unethical, will not exonerate him, if in fact you find that the intent of such defendant was actually the unlawful one contemplated by the statute.

While it is a fundamental rule that men are presumed to intend the natural consequences of their

acts, yet this presumption cannot prevail in the face of positive proof of a specific intent different from that required by the statute. When such evidence [127] is present, it devolves upon the Government to present affirmative evidence of the existence of the required unlawful intent.

You cannot surmise or speculate that the defendants intended and had reason to believe that the information was to be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. The intent or reason to believe that the information was to be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics is a fact charged which must be proven to the same extent as any other fact in the case.

Hence, if you find from the evidence that the defendant Hafis Salich and Mikhail Gorin exchanged certain information relative to certain activities of Japanese in the United States or elsewhere; but that there was no intent and no reason to believe on the part of either of said defendants in so exchanging information that there would result an injury to the United States or advantage to the Union of Soviet Socialist Republics, then such acts and conduct on the part of said defendants did not constitute an offense as charged in the indictment.

Defendant Salich excepted to the giving of said portion of said charge upon the ground that said Instruction failed correctly to state the law in re-

gard to said issue of intent as stated in defendant Salich's requested Instruction No. 12 hereinabove set forth in Assignment of Errors # LXXII.

LXXV.

The Court erred to the prejudice of defendant Salich in instructing the jury as follows, to-wit:

You must be satisfied beyond a reasonable doubt that the information alleged to have been disclosed did in fact relate to the national defense, as that term will now be defined for you by the Court. [128]

The statutes covering this type of case do not require to establish the crime of espionage that the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation. The document need not in fact be vitally important or actually injurious. The document or information must be, however, connected with or related to the national defense.

The mere fact that a report may refer to an individual or his activities does not mean that the report concerning such person is connected with the national defense.

The mere fact that a report has been made by the United States Naval Intelligence, or one of its operatives, or commander, or any officer in charge thereof, concerning an individual or his activities, does not in and of itself mean that such report relates to the national defense.

The character of each report must be determined by considering the nature of the contents of that

report, and whether or not the *contents* related to the national defense.

You are instructed that the term "national defense" includes all matters directly and reasonably connected with the defense of our nation against its enemies. The first lines of defense naturally are the men, the ships and the guns of the navy, the men, the planes and the guns of the air corps, and the men, forts and guns of the army. Behind these—but none the less necessary if the army and navy are to be kept in the field in wartime or well prepared in peacetime—are those places and things which are essential to the storage of reserves, the inter-communication of armed forces, the transportation of war supplies, the reconditioning of war-worn materials and men, and the manufacture of war supplies.

As you will note, the statute specifically mentions the places and things connected with or comprising the first line of defense when it mentions vessels, aircraft, works of defense, fort [129] or battery and torpedo stations. You will note, also, that the statute specifically mentions by name certain other places or things relating to what we may call the secondary line of national defense. Thus some at least of the storage of reserves of men and materials is ordinarily done at naval stations, submarine bases, coaling stations, dock yards, arsenals and camps; all of which are specifically designated in the statute. The inter-communication of armed forces

is carried on at telephone, telegraph, wireless or signal stations, which the statute designates. The transportation of war supplies is accomplished by canals and railroads, similarly designated. The reconditioning of war-worn materials and men is accomplished, among other places, at naval yards and naval stations and the manufacturing of war supplies is accomplished at factories and mines. The general words, "building or office" are also mentioned.

You are instructed in the first place that for purposes of prosecution under these statutes, the information, documents, plans, maps, etc., connected with these places or things must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation. Thus a map of a mine-field would be a document directly affecting the usefulness of that mine-field, for if such map should fall into the hands of another country the ships of that power might easily pass through the mine-field. Thus its usefulness as an instrument of national defense would be nullified as against that nation.

Similarly, even information that representatives or agents of some foreign power were in possession of such a map or plan or the map or plan of a shore-battery, might likewise directly concern the usefulness of that mine-field or that battery as an instrument of defense. Manifestly it might have to be rebuilt or changed. Such information might be es-

essential to any successful naval strategy in that area during wartime. [130]

You are instructed that in the second place the information, documents or notes must relate to those angles or phases of the instrumentality, place or thing which relates to the defense of our nation; thus if a place or thing has one use in peacetime and another use in wartime, you are to distinguish between information relating to the one or the other use. Thus an auto factory may make automobiles in time of peace and tanks in wartime. Information relating to its output of automobiles might not be connected with the national defense; information relating to the output of tanks might be related to the national defense.

Or, again, an air photo, from 2,000 feet altitude of terrain surrounding a battery might contain many things unimportant to the national defense, yet from a military standpoint it might be intimately connected with the efficiency of that battery, since from such photo an enemy might deduce the strong and the weak points in the position of such battery, the angle of fire of its guns, the size of its gun emplacement, and various other facts of military importance.

The information, document or note might relate to physical substances or instruments of warfare, either of our own forces or those of another power. This might include guns, gas masks, helmets, or any other part of army or navy equipment. Such in-

formation, document or note, might conceivably concern a chemical whose peculiar properties might enable it to eat through the plates of a warship or destroy communication cables, or cables connecting mines with their moorings.

The information, document or note might also contain statistics or figures relating to some place intimately connected with the national defense. For example: The document might contain the exact draught of every vessel in the United States Navy. This [131] information would enable the enemy to know precisely into how shallow waters each vessel in our fleet might venture.

The information, document or note might also relate to the possession of such information by another nation and as such might also come within the possible scope of this statute. Thus a document narrating the fact that a certain foreign power has definite information as to the exact draught of our vessels might be vital to the military and naval defense of our country. For from the standpoint of military or naval strategy it might not only be dangerous to us for a foreign power to know our weaknesses and our limitations, but it might also be dangerous to us when such a foreign power knows that we know that they know of our limitations.

You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability

of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

Whether or not the information obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions."

Defendant Salich excepted to the giving of said portion of said charge upon the ground that said Instruction failed correctly to state the law in regard to said issue of intent as stated in defendant Salich's requested Instruction No. 10 hereinabove set forth in Assignment of Errors No. LXXIII.

[132]

LXXVI.

The Court erred in denying the motion of defendant Hafis Salich for a new trial or for a judgment notwithstanding the verdict, which said motion is in words and figures as follows:

Defendant Hafis Salich respectfully moves this Honorable Court for judgment notwithstanding the verdict, or in the alternative, for a new trial, upon each and every count of the indictment and upon the following grounds and each of them:

First Count

(1) The First Count of the indictment fails to state facts sufficient to constitute a penal offense by

the defendant Hafis Salich against the United States.

(2) The evidence introduced on behalf of the Government on the First Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.

(3) The verdict is against the weight of the evidence.

(4) The evidence introduced by the Government fails to show that the information obtained concerns or affects the national defense.

(5) The evidence fails to show that the defendant Hafis Salich obtained the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

(6) The evidence fails to show that the defendant Hafis Salich obtained the said information with the purpose of obtaining information affecting the national defense.

(7) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.

(8) The Court erred in its definition of the term "national defense" in the instructions given to the jury. [133]

(9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.

(10) The Court erred in admitting in evidence Government's Exhibit 5a.

(11) The Court erred in admitting in evidence Government's Exhibit 5b.

(12) The Court erred in admitting in evidence Government's Exhibit 5c.

(13) The Court erred in admitting in evidence Government's Exhibit 5d.

(14) The Court erred in admitting in evidence Government's Exhibit 5e.

(15) The Court erred in admitting in evidence Government's Exhibit 5f.

(16) The Court erred in admitting in evidence Government's Exhibit 5g.

(17) The Court erred in admitting in evidence Government's Exhibit 5h.

(18) The Court erred in admitting in evidence Government's Exhibit 5i.

(19) The Court erred in admitting in evidence Government's Exhibit 5j.

(20) The Court erred in admitting in evidence Government's Exhibit 5k.

(21) The Court erred in admitting in evidence Government's Exhibit 5l.

(22) The Court erred in admitting in evidence Government's Exhibit 5m.

(23) The Court erred in admitting in evidence Government's Exhibit 6a. [134]

(24) The Court erred in admitting in evidence Government's Exhibit 6b.

(25) The Court erred in admitting in evidence Government's Exhibit 6c.

(26) The Court erred in admitting in evidence Government's Exhibit 6d.

(27) The Court erred in admitting in evidence Government's Exhibit 6e.

(28) The Court erred in admitting in evidence Government's Exhibit 6f.

(29) The Court erred in admitting in evidence Government's Exhibit 6g.

(30) The Court erred in admitting in evidence Government's Exhibit 6h.

(31) The Court erred in admitting in evidence Government's Exhibit 6i.

(32) The Court erred in admitting in evidence Government's Exhibit 6j.

(33) The Court erred in admitting in evidence Government's Exhibit 6k.

(34) The Court erred in admitting in evidence Government's Exhibit 6l.

(35) The Court erred in admitting in evidence Government's Exhibit 6m.

(36) The Court erred in admitting in evidence Government's Exhibit 6n.

(37) The Court erred in admitting in evidence Government's Exhibit 6o.

(38) The Court erred in admitting in evidence Government's Exhibit 6p. [135]

(39) The Court erred in admitting in evidence Government's Exhibit 6q.

(40) The Court erred in admitting in evidence Government's Exhibit 6r.

(41) The Court erred in admitting in evidence Government's Exhibit 6s.

(42) The Court erred in admitting in evidence Government's Exhibit 6t.

(43) The Court erred in admitting in evidence Government's Exhibit 6u.

(44) The Court erred in admitting in evidence Government's Exhibit 6v.

(45) The Court erred in admitting in evidence Government's Exhibit 6w.

(46) The Court erred in admitting in evidence Government's Exhibit 6x.

(47) The Court erred in admitting in evidence Government's Exhibit 6y.

(48) The Court erred in admitting in evidence Government's Exhibit 6z.

(49) The Court erred in admitting in evidence Government's Exhibit 6aa.

(50) The Court erred in admitting in evidence Government's Exhibit 6bb.

(51) The Court erred in admitting in evidence Government's Exhibit 6cc.

(52) The Court erred in admitting in evidence Government's Exhibit 6dd.

(53) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich. [136]

(54) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.

(55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.

(56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri deB. Claiborne.

(57) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

Second Count

(1) The Second Count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.

(2) The evidence introduced on behalf of the Government on the Second Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.

(3) The verdict is against the weight of the evidence.

(4) The evidence introduced by the Government fails to show that the information communicated and transmitted concerns or affects the national defense.

(5) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

(6) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with the purpose of communicating and transmitting information affecting the national defense.

(7) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich. [137]

(8) The Court erred in its definition of the term "national defense" in the instructions given to the jury.

(9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.

(10) The Court erred in admitting in evidence Government's Exhibit 5a.

(11) The Court erred in admitting in evidence Government's Exhibit 5b.

(12) The Court erred in admitting in evidence Government's Exhibit 5c.

(13) The Court erred in admitting in evidence Government's Exhibit 5d.

(14) The Court erred in admitting in evidence Government's Exhibit 5e.

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(19) The Court erred in admitting in evidence Government's Exhibit 5j.

(20) The Court erred in admitting in evidence Government's Exhibit 5k.

(21) The Court erred in admitting in evidence Government's Exhibit 5l.

(22) The Court erred in admitting in evidence Government's Exhibit 5m. [138]

(23) The Court erred in admitting in evidence Government's Exhibit 6a.

(24) The Court erred in admitting in evidence Government's Exhibit 6b.

(25) The Court erred in admitting in evidence Government's Exhibit 6c.

(26) The Court erred in admitting in evidence Government's Exhibit 6d.

(27) The Court erred in admitting in evidence Government's Exhibit 6e.

(28) The Court erred in admitting in evidence Government's Exhibit 6f.

(29) The Court erred in admitting in evidence Government's Exhibit 6g.

(30) The Court erred in admitting in evidence Government's Exhibit 6h.

(31) The Court erred in admitting in evidence Government's Exhibit 6i.

(32) The Court erred in admitting in evidence Government's Exhibit 6j.

(33) The Court erred in admitting in evidence Government's Exhibit 6k.

(34) The Court erred in admitting in evidence Government's Exhibit 6l.

(35) The Court erred in admitting in evidence Government's Exhibit 6m.

(36) The Court erred in admitting in evidence Government's Exhibit 6n.

(37) The Court erred in admitting in evidence Government's Exhibit 6o. [139]

(38) The Court erred in admitting in evidence Government's Exhibit 6p.

(39) The Court erred in admitting in evidence Government's Exhibit 6q.

(40) The Court erred in admitting in evidence Government's Exhibit 6r.

(41) The Court erred in admitting in evidence Government's Exhibit 6s.

(42) The Court erred in admitting in evidence Government's Exhibit 6t.

(43) The Court erred in admitting in evidence Government's Exhibit 6u.

(44) The Court erred in admitting in evidence Government's Exhibit 6v.

(45) The Court erred in admitting in evidence Government's Exhibit 6w.

(46) The Court erred in admitting in evidence Government's Exhibit 6x.

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(48) The Court erred in admitting in evidence Government's Exhibit 6z.

(49) The Court erred in admitting in evidence Government's Exhibit 6aa.

(50) The Court erred in admitting in evidence Government's Exhibit 6bb.

(51) The Court erred in admitting in evidence Government's Exhibit 6cc.

(52) The Court erred in admitting in evidence Government's Exhibit 6dd. [140]

(53) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich.

(54) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.

(55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.

(56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri deB. Claiborne.

(57) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

Third Count

(1) The Third Count of the indictment failed to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.

(2) The evidence introduced on behalf of the Government on the Third Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.

(3) The verdict is against the weight of the evidence.

(4) The information introduced by the Government fails to show that the information conspired to be transmitted concerns or affects the national defense.

(5) The evidence fails to show that the defendant Hafis Salich conspired to transmit the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

(6) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.

(7) The Court erred in its definition of the term "national defense" in the instructions given to the jury. [141]

(8) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.

(9) The Court erred in admitting in evidence Government's Exhibit 5a.

(10) The Court erred in admitting in evidence Government's Exhibit 5b.

(11) The Court erred in admitting in evidence Government's Exhibit 5c.

(12) The Court erred in admitting in evidence Government's Exhibit 5d.

(13) The Court erred in admitting in evidence Government's Exhibit 5e.

(14) The Court erred in admitting in evidence Government's Exhibit 5f.

(15) The Court erred in admitting in evidence Government's Exhibit 5g.

(16) The Court erred in admitting in evidence Government's Exhibit 5h.

(17) The Court erred in admitting in evidence Government's Exhibit 5i.

(18) The Court erred in admitting in evidence Government's Exhibit 5j.

(19) The Court erred in admitting in evidence Government's Exhibit 5k.

(20) The Court erred in admitting in evidence Government's Exhibit 5l.

(21) The Court erred in admitting in evidence Government's Exhibit 5m.

(22) The Court erred in admitting in evidence Government's Exhibit 6a. [142]

(23) The Court erred in admitting in evidence Government's Exhibit 6b.

(24) The Court erred in admitting in evidence Government's Exhibit 6c.

(25) The Court erred in admitting in evidence Government's Exhibit 6d.

(26) The Court erred in admitting in evidence Government's Exhibit 6e.

(27) The Court erred in admitting in evidence Government's Exhibit 6f.

(28) The Court erred in admitting in evidence Government's Exhibit 6g.

(29) The Court erred in admitting in evidence Government's Exhibit 6h.

(30) The Court erred in admitting in evidence Government's Exhibit 6i.

(31) The Court erred in admitting in evidence Government's Exhibit 6j.

(32) The Court erred in admitting in evidence Government's Exhibit 6k.

(33) The Court erred in admitting in evidence Government's Exhibit 6l.

(34) The Court erred in admitting in evidence Government's Exhibit 6m.

(35) The Court erred in admitting in evidence Government's Exhibit 6n.

(36) The Court erred in admitting in evidence Government's Exhibit 6o.

(37) The Court erred in admitting in evidence Government's Exhibit 6p. [143]

(38) The Court erred in admitting in evidence Government's Exhibit 6q.

(39) The Court erred in admitting in evidence Government's Exhibit 6r.

(40) The Court erred in admitting in evidence Government's Exhibit 6s.

(41) The Court erred in admitting in evidence Government's Exhibit 6t.

(42) The Court erred in admitting in evidence Government's Exhibit 6u.

(43) The Court erred in admitting in evidence Government's Exhibit 6v.

(44) The Court erred in admitting in evidence Government's Exhibit 6w.

(45) The Court erred in admitting in evidence Government's Exhibit 6x.

(46) The Court erred in admitting in evidence Government's Exhibit 6y.

(47) The Court erred in admitting in evidence Government's Exhibit 6z.

(48) The Court erred in admitting in evidence Government's Exhibit 6aa.

(49) The Court erred in admitting in evidence Government's Exhibit 6bb.

(50) The Court erred in admitting in evidence Government's Exhibit 6cc.

(51) The Court erred in admitting in evidence Government's Exhibit 6dd.

(52) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich. [144]

(53) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.

(54) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.

(55) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri deB. Claiborne.

(56) The Court erred in its definition of the term, "with intent or reason to believe etc." in the instructions given to the jury.

WILLARD J. STONE, JR.,

Attorney for Hafis Salich. [145]

Wherefore Hafis Salich, defendant and appellant in the above entitled cause, prays that this appeal may be allowed, that said judgment and sentence be reversed, and said defendant and appellant discharged from custody.

Dated: June 12, 1939.

WILLARD J. STONE, Jr.,
Attorney for defendant and
appellant Hafis Salich.

[Endorsed]: Assignment of Errors. Filed June 12, 1939. [146]

EXHIBIT "A"

(To Assignment of Errors of Defendant Gorin)

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 9135

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HAFIS SALICH and MIKAIL
NICHOLAS GORIN,

Defendants.

ORDER

Upon the attached stipulation of the parties, and good cause appearing;

It Is Ordered, that in the assignment of errors of the defendant Gorin, it will be sufficient to refer

to, and specify by reference to the verbatim copies of exhibits appearing in the bill of exceptions, as to Government Exhibits 5b, 5c and 6a to 6dd inclusive without repeating said exhibits verbatim in said assignment of errors, and that there need be no repetition in the assignment of errors of grounds of objections urged to said exhibits except as set forth in the bill of exceptions by reference to the grounds urged as to Government Exhibit 5a.

Dated this 2nd day of June, 1939.

CURTIS D. WILBUR,
Senior United States
Circuit Judge.

[Endorsed]: Filed: June 2, 1939. Paul P.
O'Brien, Clerk. [200]

[Title of District Court and Cause.]

**ASSIGNMENT OF ERRORS ON BEHALF OF
DEFENDANT MIKHAIL NICHOLAS GORIN**

Comes now Mikhail Nicholas Gorin (hereinafter referred to as Defendant Gorin), one of the defendants in the above entitled cause, and in connection with his appeal herein, states that in the record and proceedings during the trial of the above entitled cause in said District Court, error has intervened to his prejudice, and makes the following Assignment of Errors, which he, said defendant, avers occurred in the trial of the same cause, and upon which he will rely upon the prosecution of his appeal in the above entitled cause, to wit:

I.

That the Trial Court erred in overruling and denying the Motion to Dismiss and Demurrer to the indictment in said cause, filed and presented on behalf of the said defendant Gorin, which said order and ruling were made by the Court on the 16th day of January, 1939.

II.

That the Court erred in denying the motion of the defendant Gorin, made at the conclusion of the opening statement of the United States Attorney to dismiss the indictment and direct a verdict of acquittal, upon the grounds then and there stated to the Court. (All as appears more specifically in Bill of Exceptions.) [154]

III.

That the Court erred in denying the motion of the defendant Gorin to strike the following testimony of the witness Elias M. Zacharias, given on direct examination, as follows:

"Q. Commander, have you had under your supervision the defendant Salich as investigator?

"A. I have.

"Q. And what were his duties as such investigator?

"A. To collect information or data on individuals suspected of obtaining or attempting to obtain information relating to the Naval establishment. Information on individuals engaging in or making

preparations to engage in sabotage of the Naval establishment, or activities directly connected with the defense efforts of that Naval establishment. Individuals engaged in or attempting to engage in subversion of personnel, looking to the nullification of the defense efforts of the Naval establishment, or actual immobilization thereof.

"Mr. Pacht: I move to strike out the whole of the answer of the witness upon the ground that the answer as given by the witness has added to, and is an attempt to add to, the provisions of the Espionage Act, as set forth in Sections 31, 32 and 34, Title 50.

"The Congress itself has made no such specifications in the statute, has not given such a broad definition of the term "national defense" as Commander Zacharias in his answer has indicated, and that the opinion and conclusion of Commander Zacharias as to the purpose of the Act and as to its provisions and as to the work which any agent or employee working under Commander Zacharias is incompetent, irrelevant and immaterial for any purpose in this case.

"Mr. Stone: May I join in that objection, your Honor? [155]

"The Court: The motions on behalf of all of the defendants will be denied.

Gentlemen: The law in this case you will take from the Court. Counsel for the Government or the defendants, or the witness, or anybody else, has no power to read anything into the statutes of the

United States. At the proper time and under the proper circumstances, in instructing this jury, the Court will define the term "national defense" and will give you explicit instructions as to the law involved. This testimony is being taken, not to instruct you as to what the law is, but simply as to the fact of what the men were directed by their superior officer to do, what the scope of their activities was. It is merely a fact.

The Court: Exception to all concerned."

IV.

That the Court erred in overruling the objection of Defendant Gorin to the admission of the following testimony on the part of the witness Elias M. Zacharias:

"Q. Commander, when you mentioned the Naval establishment, what did you mean by that expression?

To which question defendant Gorin objected on the ground that it is specifically described in its relation to any violation of the Espionage Act and Section 31, Subdivision (a) of the Espionage Act, and that it called for the opinion and conclusion of the witness.

Objection overruled. Exception allowed.

The Witness: The Naval establishment are those enterprises necessary for the operation of the Navy in time of peace and in war. It comprises ships, airplanes, repair bases, operating bases, communication centers, ammunition depots, armament fac-

tories, Naval aircraft factories, fuel depots, and such correlated activities."

V.

That the Court erred in denying motion of the defendant [156] Gorin to strike the answer of the witness Elias M. Zacharias, given on direct examination, which answer of the witness is as follows:

"The witness: The Naval establishment are those enterprises necessary for the operation of the Navy in time of peace and in war. It comprises ships, airplanes, repair bases, operating bases, communication centers, ammunition depots, armament factories, Naval aircraft factories, fuel depots, and such correlated activities."

"Defendant Gorin moved to strike the whole of the answer of the witness upon the ground that under the guise of answering a question apparently calling for a statement of fact, the witness had given to the jury his interpretation of what the Naval establishment consisted and added a specification to the statute which was not contained therein, and that the answer of the witness was a conclusion and opinion upon matters defined by subject.

Motion denied. Exception allowed."

VI.

That the Court erred in overruling the objection of the defendant Gorin to testimony of the witness Elias M. Zacharias, as follows:

"Q. Will you state what you said at that time, concerning the nature of the work that your investigators were doing?

Mr. Pacht: Pardon me—

Mr. Stone (interrupting): To which I object, your Honor, upon the ground that it has no tendency to prove or disprove any of the issues involved in this action.

The Court: The objection will be overruled. Exception allowed.

Mr. Harrison: I assume, if the Court please, that it is understood that this testimony is not binding upon either Mr. or Mrs. Gorin?

The Court: Yes. The Government states that it is offering this testimony only as binding upon the defendant Salich. The Gorins not being present on this occasion, they are not to be bound by anything that is revealed in connection with this conversation, and you are instructed to ignore the conversation in, so far as the two defendants Gorin are concerned.

Mr. Pacht: Notwithstanding the statement of the District Attorney, as to who he is attempting to bind by this statement, I [157] nevertheless object, on behalf of the defendant Gorin, to the relation of the conversation, because the relation of it is, in our opinion, prejudicial, or would prove prejudicial, to these defendants, in that it will enlarge upon the provisions of the Espionage Act upon which this prosecution is being had, and read into it words and specifications therein present not con-

tained; and it is irrelevant to prove either a conspiracy or any of the allegations of the indictment, or any count thereof.

The Court: The objection is overruled.

Mr. Pacht: Exception.

The Witness: At that time I recounted the situation surrounding the espionage trial in New York recently completed. I told of the activities connected with that case, with which I was directly connected four years previously, and I emphasized to that group the vulnerability of information for the purpose of impressing upon them the necessity for properly safeguarding information. It was at that time that I stressed the necessity of keeping from anyone information developed, and pointed out that human beings have the frailty of desiring to tell what they had done, or what they had accomplished. And it was on that occasion, to impress this fact upon them, that I made the remark, after stating that they should not even tell things of this nature to their wives or families, that I said, "You must get your glory out of the accomplishment" and, as has already been testified in the Court, I did make the statement that "intelligence work, like virtue, is its own reward". I have given the substance of the first statement I made in the presence of Mr. Salich."

VII.

That the Court erred in denying the motion to strike the testimony of the witness Elias M. Zacharias, as follows:

"The Witness: At that time I recounted the situation surrounding the espionage trial in New York recently completed. I told of the activities connected with that case, with which I was directly connected four years previously, and I emphasized to that group the vulnerability of information for the purpose of impressing upon them the necessity for properly safeguarding information. It was at that time that I stressed the necessity of keeping from anyone information developed, and pointed out that human beings have the frailty of desiring to tell what they had done, or what they had accomplished. And it was on that occasion, to impress this fact upon them, that I made the remark, after stating that they should not even tell things of this nature to their wives or families, that I said, "You must get your glory out of the accomplishment" and, as has already been testified in the Court, I did make the statement that "intelligence work, like virtue, is its own reward". I have given the substance of the first statement I made in the presence of Mr. Salich."

"Mr. Pacht: If the Court please, I move to strike this testimony particularly because the Commander has brought into his answer a prosecution under the Espionage Act and has brought before this jury a prosecution under the Espionage Act which he says took place in New York that has injected into this case issues not pre- [158] sented by the indictment and is prejudicial to the defendants, so that the jury is bound to speculate or may-

speculate upon the outcome of that case in New York.

Mr. Stone: I have a separate objection, a motion to strike upon the ground that the answer is opinion testimony upon a subject upon which opinion testimony is not permitted.

The Court: The motions will both be denied.

Gentlemen of the jury, this witness is simply testifying as to what he told Mr. Salich and others at this conference. What he said may conceivably be true. It may conceivably be false. It is conceivable that he might have told the men that the moon was made of green cheese. It is not offered for the purpose of proving the truth or falsity of those statements but is offered for the purpose of showing what was told to this defendant at that particular time. You are not to acquire any prejudice of any sort by virtue of any of these statements, particularly as to the defendants Gorin who were not present during that conversation.

Exceptions allowed.

VIII.

That the Court erred in failing and refusing to grant a mistrial of the said cause, upon the application of the defendant Gorin for and because of the statement and testimony of the witness Elias M. Zacharias, and for acts and conduct in connection therewith, all as follows:

“Q. And what was said at that time relative to the nature of the work of the Naval Intelligence

or the nature of the work of its investigators in this area?

Mr. Pacht: To which we make the same objections as noted in support of our objection to previous conversation; they do not prove any allegation in the indictment, and the other grounds asserted.

The Court: My understanding is that it is not claimed the Gorins were present at this conversation? [159]

Mr. Harrison: It is not claimed they were present, if the Court please, and we are taking exactly the same position on this conversation as we did with the previous one.

The Court: Gentlemen of the jury, the Government states that they are offering this testimony as applicable only to the defendant Salich, and that it is not binding upon or intended to be binding upon the defendants Gorin, and you are instructed to ignore the substance of the conversation insofar as it has to do with the defendants Gorin.

Mr. Stone: May the record show an objection, your Honor, on behalf of the defendant Salich upon the grounds already stated?

The Court: The objections will be overruled and an exception allowed to all defendants.

By Mr. Harrison:

Q. You may proceed, Commander.

A. I outlined to them the subversive activities which I considered were going on in the United States and said to them that I considered the activ-

ity of all such groups and organization to be identical in that they were all looking to entrenchment of themselves to be able to control the defense efforts of the United States in time of an emergency in which they might become involved.

Mr. Pacht: I move to strike the answer of the witness.

The Court: The motion is sustained. The answer will be stricken.

Mr. Pacht: I ask your Honor to declare a mistrial upon the ground that the statement made by the witness, apparently in answer to a question of the District Attorney, is in substance an inflammatory address to the jury concerning the duties and obligations of all citizens with respect to national interests of the United States.

The Court: The motion will be denied.

Mr. Pacht: Exception.

The Court: It seems to me this jury understands what the situation is and that they will not be prejudiced in any way by any [160] person's views.

I have been very careful to caution you that you will take your interpretations of the law from the Court. The conversation will be stricken because it does not seem to the Court to be material to any of the allegations here before us. These conversations are admitted on the theory that from a construction as to the confidential nature of the material, the jury may be able to gather information to be used in determining whether the intent required by the statute was present in the defendant Salich.

May I caution the witness to confine his revelations of the conversation to that particular phase of the matter having to do with the instructions given to the defendant Salich and others as to the confidential nature of the work?"

IX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin, certain written reports, to all and to each of which the defendant Gorin objected, upon grounds hereinafter stated, and with the stipulation and understanding and ruling of the Court, all as hereinafter set forth, that the said objection upon the same grounds would be deemed made as to each document when offered in evidence, and with the further stipulation that said objection would be overruled and an exception noted, as appears more particularly from the following:

"Mr. Harrison: Now, if the Court please, we desire to offer in evidence report number designated as 833.

To which offer objection was made on behalf of the defendant Gorin upon the following grounds:

1. That no proper foundation has been laid for the introduction of said writing, for the reason that it has not been shown, and there is no evidence to prove, that said report, or any part thereof, relates to or is connected with the national defense of the United States. [161]

2. That said report on its face shows that it is not a part of and is not connected with and does

not relate to the national defense of the United States as that term is used in Sections 31, 32 and 34 of the Espionage Act.

3. That said report is not an instrument, writing, or document connected with or relating to the national defense as that term is used in Sections 31, 32 and 34 of the Espionage Act.

4. That said report on its face shows that it is but a communication by one officer of the United States Navy to another officer of said Navy reporting certain information acquired by said reporting officer concerning the acts and conduct of certain persons in the United States, and that it is not connected with nor does it relate to the national defense of the United States as that term is used in the Espionage Act.

5. That said report shows on its face that it is but the conclusion and opinion of the reporting officer relative to the acts and conduct of a certain individual or individuals and the transmission of said reporting officer to another officer of such conclusions and opinion, and that it is, not anything connected with the national defense or relating to the national defense as that term is used in the Espionage Act under which this prosecution is being had.

6. That the introduction of said report in evidence would have the effect of making the judgment, opinion and conclusion of an officer of the United States Navy a standard whereby to determine the conduct of the defendants and other

persons dealing with the United States Navy and permitting said officer to in effect legislate and create criminal statute.

7. That the introduction in evidence of said report would be to give to a regulation of the United States Navy relative to information acquired by its officers and employees the effect of a criminal statute, all in violation of the Fifth and Sixth Amendments of the Constitution of the United States.

[162]

8. That no proper foundation has been laid for the introduction of said writing for the reason that it has not been shown, and there is no evidence to prove, that a conspiracy was entered into to which the defendant Gorin was a party, and for the further reason that the corpus delicti has not been established.

9. That the said document constitutes hearsay testimony as to the defendant Gorin and is not binding on him.

Mr. Stone: May I join in that objection, your Honor, as to all the grounds stated by Judge Pachter, save grounds 8, 9 and 10?

The Court: As to grounds 1 to 7, the objection is overruled and exception allowed.

As to objections 8, 9 and 10—was 10 the last one?

Mr. Pachter: Yes, your Honor.

The Court: As to objections 8, 9 and 10, the objection will likewise be overruled, subject to a motion to strike at some later time in the event that the proper connection is not made, the order of

proof being largely within the discretion of the Court. An exception is allowed as to those also.

The Clerk: That will be Government's Exhibit 5 (a).

Mr. Pacht: Contained in Exhibit 5?

Mr. Harrison: This number will be 5(a), indicating that it is folder marked No. 5 for identification, and the specific exhibit is marked "(a)".

Whereupon the document referred to was received in evidence and marked "Government's Exhibit No. 5(a)".

The Court: Now, I presume you propose to make the same formal objection to each one of these proffers of exhibits, is that correct?

Mr. Pacht: That is correct.

The Court: Then, in order to save counsel the burden of repeating his objection, may we not have a stipulation on that subject, and a stipulated ruling? [163]

Mr. Harrison: As far as the Government is concerned, we are perfectly willing that the objection heretofore made shall be deemed as applying to the offering of each and every one of these documents.

The Court: And that the objection is overruled and an exception allowed as to each one?

Mr. Harrison: Yes.

The Court: Then, if there is any special objection to one particular document, that may be reserved and made at the time, and ruled upon separately.

Mr. Pacht: Yes, but it is not necessary for me to urge objections to each separate report which Mr. Harrison intends to introduce from this volume?

The Court: You will not be so required, provided your objection is on the ground already stated.

Mr. Pacht: Yes.

The Court: If you have a distinct and separate objection to one of these, you must make it specifically.

Mr. Pacht: Yes.

Mr. Stone: And that applies, of course, to the defendant Salich as well, your Honor?

The Court: The same ruling and the same stipulation will be accepted as to the defendant Salich.

Mr. Stone: That is satisfactory.

The Court: Is it so stipulated?

Mr. Stone: Yes.

Mr. Pacht: Yes.

Mr. Harrison: So stipulated, if the Court please."

That, subject to the objections to the ruling of the Court, and the stipulations and exceptions under the terms and circumstances hereinabove noted, the subject matter of the partic- [164] ular assignment herein is the admission into evidence of the following document, in words and figures as follows:

GOVERNMENT'S EXHIBIT No. 5 (a)

833

7 September 1938

Memo for DIO

Subject: Activities of Japanese.

Enclosure: (A) Memo of DIO dated 31 August 1938.

1. Very little information could be obtained by this office on the subject mentioned in Enclosure (A). Three American-born Japanese, George Ohaski, Paul Nakadate and George Suzuki, all resigned very recently from the J. A. C. L., because they were accused of indulging in communist activities. Dr. Miki Nakadate, elder brother of Paul Nakadate, is still in Los Angeles and is very strong in the Los Angeles branch of the J. A. C. L. According to the informant there is news in Los Angeles relative to any trouble in San Diego, and the Rafu Shimpō stated, the only information they had was of the resignation of the three above mentioned people from the J. A. C. L., due to communist activities.

2. This office is of the belief that the informant could discover more concerning this matter but he lacks the energy and the ingenuity to get it.

H. deB. CLAIBORNE."

X.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the

Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 5 (b) (Report No. 841), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Japanese Activities, and which exhibit appears verbatim in the Bill of Exceptions herein filed, [165] and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 260 of this printed record.]

XI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 5 (c) (Report No. 889), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Suspected Communists at North Island, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 261 of this printed record.]

XII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (a) (Report No. 570), which said report is a memorandum from the files of the office of Naval Intelligence concerning the subject identified therein as Activities of German-Japanese-Mexican People, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 270 of this printed record.]

XIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections [166] made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (b) (Report No. 560), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Japanese Fishing Boats, and which ex-

hibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 271 of this printed record.]

XIV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (c) (Report No. 548), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Takemitsu Masuno, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 274 of this printed record.]

XV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out

in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (d) (Report No. 546), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Isukasa Sonobe, and [167] which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 275 of this printed record.]

XVI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (e) (Report No. 536), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Yoshachi Ohtani, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 275 of this printed record.]

XVII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (f) (Report No. 535), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Ben Nakata, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 276 of this printed record.]

XVIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment [168] No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (g) (Report No. 534), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Notes on Japanese,

and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 277 of this printed record.]

XIX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (h) (Report No. 532), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as George H. Nakamoto, Column in Rafu Shimpō by Subject Appearing on 15 June 1938, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 277 of this printed record.]

XX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of

the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (i) (Report No. 530), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Masachika Hirata, Col., IJA, and which exhibit appears verbatim in the Bill of Exceptions [169] herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 277 of this printed record.]

XXI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (j) (Report No. 529), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Activities of Sensuki Moriya and Akira Ogura, Jr., and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with

stipulation and order herein filed. [Set forth at page 278 of this printed record.]

XXII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (k) (Report No. 528), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Activities of Dr. Shigaichi Okami, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 278 of this printed record.]

XXIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections [170] made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6(1) (Report No. 525), which said

report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Departure of Lieutenant Commander Ohtani and Lieutenant Commander Nagasawa, IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 279 of this printed record.]

XXIV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (m) (Report No. 519), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Arrival of Japanese Officers, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 280 of this printed record.]

XXV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (n) (Report No. 514), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Junzo Imamichi, and which [171] exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 280 of this printed record.]

XXVI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (o) (Report No. 507), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Information on Japanese,

Li'l Tokio, Los Angeles, California, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 281 of this printed record.]

XXVII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (p) (Report No. 505), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Junzo Imamichi, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 284 of this printed record.]

XXVIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into

[172] evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (q) (Report No. 504), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Mr. Matsumoto (first name unknown), Jane Hirao and J. Ohara, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 284 of this printed record.]

XXIX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (r) (Report No. 503), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Report on Meeting of the Far East Research Institute in Los Angeles on 9 June 1938, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment

of Errors in accordance with stipulation and order herein filed. [Set forth at page 285 of this printed record.]

XXX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6, (s) (Report No. 495), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Issei-Nisei-Busse, and which exhibit appears verbatim in the Bill of Exceptions herein filed, [173] and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 287 of this printed record.]

XXXI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's

Exhibit No. 6 (t) (Report No. 489), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Lieutenant Commander K. Nagasawa and Lieutenant Commander I. Ohtani, IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 288 of this printed record.]

XXXII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (u) (Report No. 482), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Japanese Visitors to Oil Refineries, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 289 of this printed record.]

XXXIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into [174] evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (y) (Report No. 480), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Return to Los Angeles and Probable Date of Departure for Japan of Sensuki Moriya and Akira Ogura, Jr., and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 289 of this printed record.]

XXXIV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence; and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (w) (Report No. 479), which said report is a memorandum from the files of the Of-

fice of Naval Intelligence concerning the subject identified therein as Arrival and Departure of Japanese Officers, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 291 of this printed record.]

XXXV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (x) (Report No. 477), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Arrival of Japanese [175] Officer, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 291 of this printed record.]

XXXVI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and

subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (y) (Report No. 472), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as T. Uchida, Eng. Comdr., IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 291 of this printed record.]

XXXVII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (z) (Report No. 469), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Lieutenant Commander Inao Ohtani, IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment

of Errors in accordance with stipulation and order herein filed. [Set forth at page 292 of this printed record.]

XXXVIII.

That the Court erred in admitting into evidence, over the [176] objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (aa) (Report No. 466), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Lieutenant Commander Inao Ohtani, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 292 of this printed record.]

XXXIX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (bb) (Report No. 465), which said

report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Hideo Futami, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 293 of this printed record.]

XL.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (cc) (Report No. 439), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Chieko (Dorothy) Nagai, [177] and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 293 of this printed record.]

XLI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and

subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (dd) (Report No. 435), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as T. Kono, Engineer-Commander, IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 294 of this printed record.]

XLII.

That the Court erred in denying the motion of the defendant Gorin for an instructed and directed verdict of Not Guilty as to all counts of the indictment, which said motion was made at the conclusion of the introduction of all of the evidence on behalf of the government, upon the grounds that said evidence was insufficient to warrant a conviction of the defendant Gorin, and upon all of the grounds set forth in support of said motion, as appears more particularly in the Bill of Exceptions. [Set forth at page 317 of this printed record.]

XLIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin, defendant Salich's Exhibit "B", and that the grounds of the objection and the proceedings had and the exceptions taken and the exhibit so received in evidence, appear as follows: [178]

"Whereupon there was offered in evidence Report No. 1116. Defendant Gorin objected on the ground that nothing contained in it related to or was concerned with the National Defense and that it was incompetent, irrelevant and immaterial, and upon the ten grounds offered in support of his objection to the first of the reports which were offered in evidence by the Government.

Objection overruled. Exception allowed. The document referred to was received in evidence and marked "Defendant Salich's Exhibit B", and is in words and figures as follows:

18 November, 1938

Memo for C. I. O.

Subject: Bakesy, Captain Charles G.—Interview with the U. S. Secret Service Office in Los Angeles.

1. The subject, individual was met on the appointed day and it developed that he wanted to see the proper government authority regarding the prosecution of one Leon Lewis, whom Bakesy accused of impersonating an "Army Major" and obtaining from him some of his subversive evi-

dence. It seems that Leon Lewis was introduced to Bakesy once as "Major Frank Montgomery" and later, when Bakesy called on Leon Lewis on some other matter, he recognized him as "Major Montgomery."

2. Bakesy was referred to the United States Attorney's office.

H. deB. CLAIBORNE.

XLIV.

That the Court erred in sustaining an objection to the introduction into evidence of that certain article, to-wit, a published writing appearing in Vol. 1, No. 1, Ken Magazine, issue of April 7, 1938, pages 40, etc., copy of which article, with the exception of photographs therein, appears in the Bill of Exceptions, and which is not copied here for the reason that the whole thereof is lengthy and voluminous and is printed in full in the Bill of Exceptions and repetition here would be a useless repetition and unnecessarily en- [179] cumber the records, [Set forth at page 485 of this printed record.] and that the proceedings had and taken in connection with the offer into evidence appear in the Bill of Exceptions as follows:

Commander Zacharias, witness on behalf of the Government, testified upon cross-examination, in part, as follows:

"Referring to Report No. 536, which is Government's Exhibit No. 6(e), which reads:

"Ohtani, Yoshachi. He will be under Minister S. Koshida; stationed at Mexico City, and who is Minister to six countries from Mexico southward. Ohtani succeeds T. Umimoto, called back to the foreign office; reference 'Ken', article on Japanese spies in the first issue."

The reference there is to an article in the magazine named "Ken", the issue of April, 1938. The article in "Ken" magazine entitled "Exposing the Peril of Panama?" which you are showing me, is the article that I had reference to.

Whereupon the article referred to was marked Defendants Gorin and Salich Exhibit A for identification.

* * * * *

Whereupon there was offered in evidence by the defendants Gorin and Salich the article respecting the peril of Japan, beginning on page 40 of Volume 1, No. 1, Ken Magazine, April 7, 1938, to which offer the Government objected upon the ground that it was incompetent, irrelevant and immaterial and did not tend to establish any of the issues in the case.

Objection sustained. Exception allowed."

XLV.

The Court erred in intrusting the Jury in part as follows:

"You must be satisfied beyond a reasonable doubt that the information alleged to have been disclosed

did in fact relate to the national defense, as that term will now be defined for you by the Court. [180]

The statutes covering this type of case do not require to establish the crime of espionage that the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation. The document need not in fact be vitally important or actually injurious. The document or information must be, however, connected with or related to the national defense.

The mere fact that a report has been made by the United States Naval Intelligence, or one of its operatives, or commander, or any officer in charge thereof, concerning an individual or his activities, does not in and of itself mean that such report relates to the national defense.

The character of each report must be determined by considering the nature of the contents of that report, and whether or not the *(contents)* related to the national defense.

You are instructed that the term "national defense" includes all matters directly and reasonably connected with the defense of our nation against its enemies. The first lines of defense naturally are the men, the ships and the guns of the navy, the men, the planes and the guns of the air corps, and the men, forts and guns of the army. Behind these—but none the less necessary if the army and navy are to be kept in the field in war—

time or well prepared in peacetime—are those places and things which are essential to the storage of reserves, the inter-communication of armed forces; the transportation of war supplies, the reconditioning of war-torn materials and men, and the manufacture of war supplies.

As you will note, the statute specifically mentions the places and things connected with or comprising the first line of defense when it mentions vessels, aircraft, works of defense, fort or battery and torpedo stations. You will note, also, that the statute specifically mentions by name certain other places or things relating to what we may call the secondary line of national defense. Thus [181] some at least of the storage of reserves of men and materials is ordinarily done at naval stations, submarine bases, coaling stations, dock yards, arsenals and camps; all of which are specifically designated in the statute. The inter-communication of armed forces is carried on at telephone, telegraph, wireless or signal stations, which the statute designates. The transportation of war supplies is accomplished by canals and railroads, similarly designated. The reconditioning of war-torn materials and men is accomplished, among other places, at naval yards and naval stations and the manufacturing of war supplies is accomplished at factories and mines. The general words, "building or office" are also mentioned.

You are instructed in the first place that for purposes of prosecution under these statutes, the

information, documents, plans, maps, etc., connected with these places or things must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation. Thus a map of a mine-field would be a document directly affecting the usefulness of that mine-field, for if such map should fall into the hands of another country the ships of that power might easily pass through the mine-field. Thus its usefulness as an instrument of national defense would be nullified as against that nation.

Similarly, even information that representatives or agents of some foreign power were in possession of such a map or plan or the map or plan of a shore-battery, might likewise directly concern the usefulness of that mine-field or that battery as an instrument of defense. Manifestly, it might have to be rebuilt or changed. Such information might be essential to any successful naval strategy in that area during wartime.

You are instructed that in the second place the information, documents or notes must relate to those angles or phases of the instrumentality, place or thing which relates to the defense of our nation; thus, if a place or thing has one use in peacetime and another [182] use in wartime, you are to distinguish between information relating to the one or the other use. Thus an auto factory may make automobiles in time of peace and tanks in wartime. Information relating to its output of automobiles might not be connected with the national

defense; information relating to its output of tanks might be related to the national defense.

Or, again, an air photo, from 2,000 feet altitude of terrain surrounding a battery might contain many things unimportant to the national defense, yet from a military standpoint it might be intimately connected with the efficiency of that battery, since from such photo an enemy might deduce the strong and the weak points in the position of such battery, the angle of fire of its guns, the size of its gun emplacement, and various other facts of military importance.

The information, document or note might relate to physical substances or instruments of warfare, either of our own forces or those of another power. This might include guns, gas masks, helmets, or any other part of army or navy equipment. Such information, document or note might conceivably concern a chemical whose peculiar properties might enable it to eat through the plates of a warship or destroy communication cables, or cables connecting mines with their moorings.

The information, document or note might also contain statistics or figures relating to some place intimately connected with the national defense. For example: The document might contain the exact draught of every vessel in the United States Navy. This information would enable the enemy to know precisely into how shallow waters each vessel in our fleet might venture.

The information, document or note might also relate to the possession of such information by another nation and as such might also come within the possible scope of this statute. Thus a document narrating the fact that a certain foreign power has definite information as to the exact draught of our vessels might be vital to the military and naval defense of our country. For from the standpoint of military or naval strategy it might not only be dangerous to us for a foreign power to know our weaknesses and our limitations, but it might also be dangerous to us when such a foreign power knows that we know that they know of our limitations.

You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions."

XLVI

That the grounds urged at the trial for the objection and the exception taken were as follows:.

“Mr. Pacht: If the Court please, I desire, first, to except to the instruction which Your Honor just gave to the jury, that it is sufficient to convict if any one or more of the reports offered in evidence deal with the national defense.

The Court: That wasn't the instruction. You will have to be more specific in order to make the exception any good. Taken at this late date, it would be meaningless. The Court connected it up with the entire instruction, and stated that as to those reports it was not necessary that all of those reports deal with the national defense; that one or more of the reports could deal with the national defense, and that the jury in their deliberations, tying it in with the entire instructions, should so consider it. [184]

Now, if your point—if it is your position that all of the instructions had to do with the national defense in order that the defendants should be guilty, you must be specific. If that is your point, that may be registered.

Mr. Pacht: My point is, if the Court please, under the statute, the jury cannot determine whether any of these reports deal with the national defense.

The Court: That is an entirely different question.

Mr. Pacht: And that none of them do, as a matter of law, deal with the national defense.

The Court: That is a different point.

Your point there is that the jury has no privilege in determining whether or no any of these reports have to do with the national defense, that that is a matter for the Court and not for the jury, as a matter of law.

Mr. Pacht: Yes.

The Court: Yes. That exception may be allowed."

* * * * *

"Mr. Pacht: Your Honor, I specifically except to your Honor's instruction to the jury concerning the subject matter of national defense, the definition of the term national defense; and I further except to it upon the ground that it violates Sections 5 and 6 of the United States Constitution—or, rather, the amendments to the Constitution—and that it submits for the determination of the jury and the interpretation of the jury, a law or an enlargement of it.

The Court: The exception will be permitted.

Mr. Pacht: And, in that connection, we specifically request the Court to give the instruction relating to national defense and the definition of it, as set forth in our requested Instructions G-29, G-37, G-39, CC—which I haven't yet called to your Honor's [185] attention.

The Court: The request will be denied, and an exception allowed."

XLVII.

That the Court erred in instructing the jury, in part, as follows:

"You are instructed that the law requires only that the Government prove either an intent or a reason to believe that the information was to be used either to the injury of the United States or to the advantage of the foreign nation—in this case, the Union of Soviet Socialist Republics. Hence, it will be sufficient to satisfy the requirements of the law if, for example, the Government proves to you beyond a reasonable doubt that both Salich and Gorin had reason to believe that the information disclosed was to be used to the advantage of Russia. In such case, you would be entitled to find that each defendant had the criminal intent specified in the statute.

The intent or purpose of a person is from its very nature a matter which has to be proved by circumstantial evidence. It is obvious that it is impossible to examine into the mind of the person while he is committing an alleged crime to ascertain just what was his intent. It is also true that if a person is about to commit a crime, or during the course of committing a crime, he avoids as far as possible revealing what his intentions are. The explanation which the defendant makes or what was his intent even though quite plausible is not conclusive as to just what was his intent.

This intent the Government must prove to you as a fact; but intent can be proved by facts and acts from which it may be inferred. If the inferences from proven facts and acts are as consistent with an innocent as with a guilty intent, the point is not proved. But on the other hand, if they exclude every hypothesis except that of guilt, the point is proved. In considering these facts and acts, and the inferences drawn from them, you should consider [186] whether or not there are any circumstances brought out in the evidence of this case which are consistent with some intent other than that this information be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. You should consider likewise the character of the information here in question—whether or not it is susceptible to use by the Union of Soviet Socialist Republics, and whether or not the defendant Hafis Salich knew facts from which he concluded, or reasonably should have concluded, that this information could advantageously be used by the Union of Socialist Republics.”

That the grounds urged at the trial for the objection and the exception taken were as follows:

“Mr. Pacht: We except to the Court’s charge given this morning that Salich’s belief, honestly entertained, as to his view of the law that the information which he gave to Gorin was not in-

jurious to the United States or of advantage to a foreign power, is of no avail to him as a defense in this case, but that he may be convicted nevertheless. We except to that charge. I am hereby referring to the subject matter; I am not pretending to give the exact phraseology.

The Court: You except to the form of the instruction?

Mr. Pacht: Yes.

The Court: Very well. The exception will be entertained.

Mr. Pacht: We except to the charge of the Court given this morning that it is sufficient if the defendants had reason to believe that the information was to be given to the U. S. S. R., and we ask the Court to charge before this jury may convict the defendants, or any of them, they must find that the defendants had a special intent to injure the United States, or a specific intent that the transmittal or obtaining of the information was to be of advantage to the U. S. S. R. [187]

The Court: The point there being that if you wish an instruction, it must be a specific intent?

Mr. Pacht: Yes, your Honor.

The Court: The reason to believe, as defined by the Court, is not sufficient?

Mr. Pacht: Yes, your Honor.

The Court: The exception will be entertained, and the request denied."

XLVIII.

That the Court erred in failing and refusing to give to the jury Instruction No. G-29 as it appears on Page A-1, requested by the defendant Gorin, which said requested Instruction was as follows:

"Defendants' Instruction No. G-29

As defined in the statutes in question in this case, the National Defense relates solely and is limited to the following places and things, namely:

Any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dock, yard, canal, railroad, arsenal, camp, factory, mine, telegraph telephone, wireless, signal station, building, office, other places connected with the National Defense owned or constructed or in progress of construction by the United States, or under the control of the United States, or any of its officers or agents, or within the exclusive jurisdiction of the United States, or of any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war, are being made, prepared, repaired, or stored under any contract or agreement with the United States, or by any person on behalf of the United States."

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask your Honor to instruct the jury— [188] strike that. In addition to the in-

structions which we have asked the Court to give, and which have been filed already, and specifically at this time we ask the Court to give Instruction No. G-29, to the effect that, as defined in the statute in question in this case, the national defense relates solely and is limited to the places and things designated in Subdivision (a) of Section 31, Title 50 of the United States Code, to-wit, any vessel, aircraft, and so forth.

The Court: That exception will be noted, and the requested instruction declined.

XLIX.

That the Court erred in failing and refusing to give to the jury Instruction No. G-37 as it appears on Page A-1, requested by the defendant Gorin, which said requested Instruction was as follows:

"Defendants' Instruction No. G-37

Unless you find beyond a reasonable doubt from the evidence in the case that the defendants Gorin copied, took, made, obtained, or attempted or induced or aided another to copy, take, make or obtain a sketch, photograph, photographic negative, blue-print, plan, map, model, instrument, appliance, document, writing or note concerning a vessel, aircraft, work or defense, Navy yard, Naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless,

signal station, building, office, or other place connected with the national defense, as that term is otherwise in these instructions defined, and unless you further find that such sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing or note connected with said national defense was obtained with intent or reason to believe that the same was to be used in the injury of the United States or to the advantage of a foreign nation, you may not convict the said defendants Gorin, or either of them, but on the contrary, they are [189] entitled to an acquittal at your hands. To put it another way, it is not sufficient for you to find that any document or report was obtained by the defendants Gorin, or either of them, from the Naval Intelligence. You must in addition find that such document was a sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing or note relating to said national defense, and concerned some vessel, aircraft, work of defense, Navy yard, Naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with said national defense."

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: We ask the Court to give the jury Instruction No. G-37, heretofore submitted to the Court, in substance, to this effect: That unless the jury find beyond a reasonable doubt from the evidence in the case that the defendants Gorin took, copied, made, obtained or attempted to induce another to make a copy, sketch, and so forth—

The Court: (Interrupting): I am familiar with that.

Mr. Pacht: G-37?"

The Court: I have it before me.

Mr. Pacht: With the intent that the same be to the injury of the United States or of advantage to a foreign power, that they are not guilty of any offense, and the jury should acquit them.

The Court: The request will be denied; exception allowed."

L

That the Court erred in failing and refusing to give to the jury Instruction No. G-39 as it appears on Page A-2; requested by the defendant Gorin, which said requested Instruction was as follows: [190]

"Defendants' Instruction No. G-39

The evidence in this case discloses that many of the reports enumerated in the indictment deal with the arrival and departure of certain Japanese officials, Naval officers, and Japanese businessmen; other of said reports deal with the activities of

Japanese fishing boats in Southern California waters; still others of said reports deal with the political and economic opinions of various and sundry persons; still other of said reports deal with the conduct of certain Japanese with relation to the support of the Japanese war in China, and the raising of funds for the prosecution of said war.

If you find that these reports or the substance of them, or any of them, were obtained by the defendant Mikhail Gorin from the defendant Salich, or from the Naval Intelligence, that fact or circumstance would not make the defendant Gorin guilty of any of the offenses charged in the indictment. On the contrary, he is entitled to an acquittal at your hands.

None of said matters relate to or concern the national defense as I have heretofore defined that term to you."

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask your Honor to instruct the jury as more fully set forth in our requested instruction heretofore submitted, No. G-39, that the evidence in this case discloses that many of the reports enumerated in the indictment deal with the arrival and departure of Japanese commercial operators, Naval officers and Japanese businessmen, and other reports that deal with activities of Japanese fishing boats in Southern California, and still

others that deal with the political and economic opinions of various and sundry persons, and still others deal with the conduct of certain Japanese, and so forth.

The Court: You mean the same form as submitted? [191]

Mr. Pacht.: Exactly.

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as submitted in Instruction No. BB, heretofore submitted to the Court.

The Court: The request will be denied; exception allowed.

Mr. Pacht: That is as to our requested instruction BB?

The Court: Yes."

LI.

That the Court erred in failing and refusing to give to the jury Instruction No. GG as it appears on Page A-4, requested by the defendant Gorin, which said requested Instruction was as follows:

"Defendants' Gorin Requested Instruction No. GG.

You are instructed that Government exhibits 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 5m, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 6q, 6r, 6s, 6t, 6u, 6v, 6w, 6x, 6y, 6z, 6aa, 6bb, 6cc, 6dd, being files of the United States Office of Naval Intelligence, numbered respectively, 833, 841, 889,

1145, 1139, 1133, 1132, 1130, 1129, 897, 1110, 1104, 1081, 570, 560, 548, 546, 536, 535, 534, 532, 530, 529, 528, 525, 519, 514, 507, 505, 504, 503, 495, 489, 482, 480, 479, 477, 472, 469, 466, 465, 439, 435, and the information contained in them, do not, and each of them does not, affect or relate to the national defense."

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to give the jury Instruction No. GG, requested by us, in which there is set forth certain numbered reports. They do not relate to the national defense.

The Court: The request will be received, denied, and an exception allowed."

EII.

That the Court erred in failing and refusing to give to [192] the jury Instruction No. FF-1 as it appears on Page A-4, requested by the defendants Gorin, which said requested Instruction was as follows:

"Defendants' Gorin Instruction No. FF-1

You are advised that the term "to the advantage of any foreign nation" as used in Sections 31, 32, and by reference in Section 34 of the Espionage Act, is defined as and is to be taken by you as meaning an advantage as against the United States. It does not mean to the advantage of a foreign nation against another foreign nation, but only

as against the United States, unless it would also be of advantage against the United States. The word "advantage" is specifically defined as meaning a condition of being in advance or superior or in a superiority of state or position or condition or circumstance, opportunity, or means particularly favorable to success or to any desired end."

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to instruct the jury as set forth in our requested Instruction FF-1.

The Court: The request will be denied, and an exception allowed."

LIII.

That the Court erred in failing and refusing to give to the jury Instruction No. FF-2 as it appears on Page A-4, requested by the defendants Gorin, which said requested Instruction was as follows:

"Defendants' Gorin Requested Instruction No. FF-2

You are instructed that, if you arrive and agree upon a verdict of not guilty in favor of the defendant Natasha Gorin on the third count of the indictment, that is, on the conspiracy count, as to which count she alone is charged, I then charge you that you must also find and return a verdict

of not guilty as to the other two defendants upon count three of the indictment, that is, the conspiracy count." [193]

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask your Honor to instruct the jury as heretofore requested in our submitted Instruction No. FF, which I will, for the present purpose, designate as FF-2.

The Court: The request will be denied, and an exception allowed."

LIV.

That the Court erred in failing and refusing to give to the jury Instruction No. AA as it appears on Page A-5, requested by the defendants Gorin, which said requested Instruction was as follows:

"Defendants' Gorin Instruction No. AA

You are instructed that, as I have heretofore instructed you, a conspiracy must be founded and based upon an agreement by and between each of the defendants charged to accomplish the transmittal and communication to the U. S. S. R. of "documents, writings, plans, notes, instruments, and information relating to the national defense." An agreement of necessity means a meeting of minds as to the object to be accomplished. In this case it is charged in the indictment that the illegal

purpose as to which defendants Salich and Gorin agreed, was to so transmit the "documents, writings, plans, notes, instruments, or information relating to the national defense", and I charge you that if you find and believe from the evidence that there was at no time any intent or purpose on the part of the defendant Salich to give any of such specifically mentioned items, even though you may believe that the defendant Gorin desired to and wanted to get such items, that there was no meeting of minds between the defendants Salich and Gorin sufficient to constitute an agreement or combination within the meaning of the law of conspiracy, sufficient to constitute a conspiracy, and you will return a verdict of acquittal in favor of the defendants as to the third count of the indictment."

That the grounds urged for the giving of such requested [194] Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask your Honor to instruct the jury as per the instruction submitted by us numbered AA, concerning the subject of conspiracy, and that it refers to the documents and papers and objects referred to in Subdivision (a) of Section 31.

The Court: The offer will be declined, and an exception allowed."

LV.

That the Court erred in failing and refusing to give to the jury Instruction No. K and which

was requested by the defendants Gorin, which said requested Instruction was as follows:

“Defendants’ Gorin Instruction No. K

You are instructed that unless you find and believe upon the evidence that it was the intention of the defendants Gorin to obtain information or to transmit information to the injury of the United States and to the advantage of U. S. S. R. in a military sense, that is, so that it would do harm to the United States in a military way, or would aid the U. S. S. R. against the United States in a military way, such acts and conduct on their part does not have the necessary element of intent required under the law, and you will acquit said defendants.”

That the grounds urged for the giving of such requested Instruction, and the exception taken were as follows:

“Mr. Pacht: I ask your Honor to instruct the jury as per the instruction heretofore submitted to the Court marked K.

The Court: The request will be denied, and an exception allowed.

LVI.

That the Court erred in failing and refusing to give to the jury Instruction No. T as it appears on Page A-5, requested by the defendants Gorin, which said requested Instruction was as follows:
[195]

"Defendants' Gorin Instruction No. T

You are instructed that the acts charged, that is the alleged obtaining or transmitting or conspiracy to transmit reports of the office of Naval Intelligence, or information therefrom, by the defendants, must in each instance have been done with the intent on the part of defendants or reason on their part to believe, "that it was to be used to the injury of the United States or to the advantage of the U. S. S. R. I desire to define certain of these words to you. "Injury" as used in the statutes under which this indictment is being prosecuted means damage or hurt done to or suffered by the United States in a military sense. Likewise, the word "advantage", as used in the statutes as a military connotation. The word "advantage" used by itself means the condition of being in advance or superior or in a superiority of state of position, or any condition, circumstance, opportunity, or means particularly favorable to success or to any desired end. To give the meaning that the statute contemplates, there must be found that the information was obtained or disclosed with the intent or reason to believe that it was to be used to the injury of the United States and to the advantage of the U. S. S. R. as against the United States, all in a military sense. In other words, the defendants in order to be found guilty of the specific intent charged in the indictment and required under the statute must have had a specific intent or rea-

son, as ordinary persons would have, to believe that the information obtained or transmitted was to be used to do harm or injury to the United States in a military way, and to give to the U. S. S. R. a condition of superiority favorable to success as against the United States. The advantage must be both in a military sense and be an advantage not merely academic or general but an advantage as against the United States."

That the grounds urged for the giving of such requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to instruct the jury in accordance with the instruction heretofore submitted to the Court marked T, defining the terms "injury" and "advantage."

The Court: The request will be denied, and an exception allowed."

LVII.

That the Court erred in failing and refusing to give to the jury Instruction No. G-41 as it appears on Page A-6; requested by the defendants Gorin, which said requested Instruction was as follows:

"Defendants' Instruction No. G-41

You are instructed that the defendants are charged in the second count of the indictment with

communicating, delivering and transmitting to the Union of Soviet Socialist Republics the confidential reports of the investigators of the United States Naval Intelligence specifically described in said second count, and in the third count of said indictment with conspiring so to do. You are further instructed that the defendant Mikhail Gorin cannot be found guilty under said second or third count of so transmitting and communicating said reports solely by proof of the fact that he is a citizen or national of said Union of Soviet Socialist Republics or an agent or representative thereof. In other words, he cannot be said to transmit or deliver any of said reports to himself and it must appear from the evidence beyond a reasonable doubt that said Mikhail Gorin did some other act or communicated with some other person or agency in communicating, delivering and transmitting said reports."

. That the grounds urged for the giving of such requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to instruct the jury as per the submitted instruction G-41.

The Court: It will be declined; exception allowed." [197]

LVIII.

That the Court erred in failing and refusing to give to the jury Instruction No. G-19 as it

appears on Page A-7, requested by the defendants Gorin, which said requested Instruction was as follows:

"Defendants' Instruction No. G-19

You are instructed that it is your duty as jurors to deliberate and confer one with the other fully and honestly about the questions herein involved under these instructions, but you are further instructed that after having fully considered and weighed the various points of view that may arise in your discussion among you that you are individually to arrive at your own honest judgment as to the guilt or innocence of each particular defendant on each count. It is not your duty, as a juror, to compromise your verdict with a view to rapid and hasty decision for purposes other than that of arriving at the sure and frank truth as it actually exists in each juror's mind, and if, after such discussions, any of you have a reasonable doubt as to the guilt of any or all of the defendants, it is not only your right but your duty to maintain your position and not to compromise your verdict."

That the grounds urged for the giving of such requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to instruct the jury as requested by us in instruction heretofore submitted to the Court marked G-19, concerning

the defendants being entitled to the individual opinion of each juror.

The Court: That will be declined; exception allowed."

LIX.

That the Court erred in denying the motion of the defendant Gorin in arrest of judgment, made upon the grounds stated and set forth in the written motion filed and made as the same appears in the Bill of Exceptions. [198]

LX.

That the Court erred in denying motion of the defendant Gorin for a new trial, said motion being made on the grounds set forth in written motion filed and made as the same appears in the Bill of Exceptions.

(Note: Attached to this Assignment of Errors and marked "Exhibit A" is a copy of the order made in the matter in the Circuit Court of Appeals by the Honorable Curtis D. Wilbur, senior Judge, relative to the omission of repetitive matter in the Assignment of Errors.)

[See page 629 of this printed record.]

Wherefore, the defendant Mikhail Nicholas Gorin, by reason of said errors and other manifest errors appearing in the records herein, and upon the record in said cause, prays that the verdict and judgment of conviction herein, and each of them, may be reversed, set aside and that he be discharged from custody.

Dated this 9th day of June, 1939.


PACHT, PELTON, WARNE & BLACK
ISAAC PACHT
CLORE WARNE
Attorneys for Defendant
Mikhail Nicholas Gorin.

[Endorsed]: Assignment of Errors—Filed June
10, 1939. [199]

[Endorsed]: United States Circuit Court of Ap-
peals for the Ninth Circuit. No. 9135. Mikhail Nich-
olas Gorin, Appellant, vs: The United States of
America, Appellee. No. 9136. Hafis Salich, Appel-
lant, vs. The United States of America, Appellee.
Transcript of Record. Upon Appeals from the Dis-
trict Court of the United States for the Southern
District of California. Central Division.

Filed July 21, 1939.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit.



In The United States Circuit Court of Appeals
For The Ninth Circuit

No. 9135

UNITED STATES OF AMERICA,
Plaintiff and Respondent,

vs.

HAFIS SALICH and MIKHAIL NICHOLAS
GORIN,

Defendants and Appellants.

DEFENDANT GORIN'S STATEMENT OF
POINTS ON WHICH HE INTENDS TO
RELY AND DESIGNATION OF RECORD.

To Paul P. O'Brien, Esq., Clerk of said court, and
to Ben Harrison and Norman W. Neukom,
Esqs., attorneys for plaintiff and respondent:

Please take notice that the defendant and appel-
lant Mikhail Nicholas Gorin, on his appeal in this
case, intends to rely upon the following points, all
as more particularly set forth in his assignment of
errors herein filed, to-wit:

(1) Error in overruling and denying motion to
dismiss and demurrer to indictment as specifically
set forth in assignment of error I.

(2) Error in denying said defendant's motion
to dismiss indictment and direct verdict of acquittal
at conclusion of opening statement of the United
States Attorney, as specifically set forth in assign-
ment of error II.

(3) Error in denying motion to strike certain testimony of witness Zacharias, as specifically set forth in assignment of error III.

(4) Error in overruling objection of defendant Gorin to admission of certain testimony given by the witness Zacharias, as specifically set forth in assignment of error IV.

(5) Error in overruling objection of defendant Gorin to testimony of Zacharias, as specifically set forth in assignment of error VI.

(6) Error in denying motion to strike certain testimony of witness Zacharias, as specifically set forth in assignment of error VII.

(7) Error in refusing to grant a mistrial of said cause upon application of defendant Gorin because of statement and testimony of Zacharias, as specifically set forth in assignment of error VIII.

(8) Error in admitting into evidence certain written reports produced from the files of the office of Naval Intelligence, being a series of reports, all as specifically set forth in assignment of errors IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII.

(9) Error in sustaining objection on behalf of the Government to introduction into evidence of a certain newspaper article in Volume 1, No. 1, of Ken Magazine, as specifically set forth in assignment of error XLIV.

(10) Error of the court in instructing the jury, as specifically set forth in assignment of errors XLV and XLVI and XLVII, the substance of said instructions objected to covering the interpretation by the court of the statute under which the prosecution in this action was had, to wit, 50 United States Code, Sections 31, 32, and 34.

(11) Error in refusing to give certain instructions requested by defendant Gorin covering the question of the interpretation of said statutes, all as specifically set forth in assignment of errors XLVIII, XLIX, L, LI, LII, LIV, LV, LVI, LVII.

(12) Error in refusing to give defendant Gorin's requested instruction FF-2, as specifically set forth in assignment of error LIII, with reference to law of conspiracy as applicable to the case.

(13) Error in refusing to instruct the jury as requested in defendant Gorin's instruction No. D-19, as specifically set forth in assignment of error LVIII, with reference to the duty of the several jurors.

(14) Error in denying motion of the defendant Gorin in arrest of judgment, as specifically set forth in assignment of error LIX.

(15) Error in denying motion of defendant Gorin for new trial, as specifically set forth in assignment of error LX.

Designation of Record

You will further take notice that said defendant designates the parts of the record which he thinks

necessary for the consideration of the said points on which said defendant intends to rely on the appeal, as follows:

The whole of the transcript of record on appeal as forwarded by the clerk of said district court in which the action was tried in so far as it concerns the said defendant Mikhail Nicholas Gorin and as specifically set forth in Praecipe for transcript of record on appeal delivered to the clerk of said court and forwarded as a part of the transcript of said record, and including the whole of the Bill of Exceptions in said action settled and allowed.

Dated: 20 July, 1939.

MIKHAIL NICHOLAS GORIN,

Appellant

By PACT, PELTON, WARNE &
BLACK,
CLORE WARNE,
ISAAC PACT,

Attorneys for said Appellant.

Received copy of the within Defendant Gorin's statement of points on which he intends to rely and designation of record.

This day of July, 1939.

BEN HARRISON

By RALPH E. LAZARUS.

[Endorsed]: Filed Jul. 21, 1939. Paul P. O'Brien
Clerk.

[Title of Circuit Court of Appeals and Cause.]

**DEFENDANT SALICH'S STATEMENT OF
POINTS ON WHICH HE INTENDS TO
RELY AND DESIGNATION OF RECORD.**

To Paul P. O'Brien, Esq., Clerk of said Court, and
to Ben Harrison, Esq. and Norman W. Neu-
kom, Esq., attorneys for plaintiff and respond-
ent:

You and each of you will please take notice that
the defendant and appellant Hafis Salich, on his
appeal in the above entitled case, intends to rely
upon the following points, all as more particularly
set forth in his Assignment of Errors herein filed,
to-wit:

(1) Error in overruling the demurrer and mo-
tion to quash indictment made by defendant Hafis
Salich, as specifically set forth in Assignment of
Error I.

(2) Error in denying motion of Hafis Salich
for a directed verdict made at the conclusion of
the opening statement of the District Attorney, as
specifically set forth in Assignment of Error II.

(3) Error in admitting evidence on behalf of
plaintiff given by the witness Alice A. Nelson, as
specifically set forth in Assignment of Error III.

(4) Error in denying the motion of the defend-
ant Salich to strike the whole of the testimony of
the witness Alice A. Nelson, as specifically set forth
in Assignment of Error IV.

(5) Error in overruling the objection of defendant Salich to the admission of certain testimony given by the witness Denton W. Leonard as specifically set forth in Assignment of Error V.

(6) Error in overruling the objection of defendant Salich to the admission of certain testimony given by the witness Hanna, as specifically set forth in Assignment of Error VI.

(7) Error in denying the motion of defendant Salich to strike certain testimony of the witness Roy Hanna, as specifically set forth in Assignment of Error VII.

(8) Error in overruling the objection of the defendant Salich to the admission of certain testimony given by the witness Roy Hanna, as specifically set forth in Assignment of Error VIII.

(9) Error in overruling the objection of the defendant Salich to the admission of certain testimony given by the witness Roy Hanna, as specifically set forth in Assignment of Error VIIIa.

(10) Error in denying the motion of the defendant Salich to strike certain testimony of the witness Roy Hanna, as specifically set forth in Assignment of Error IX.

(11) Error in overruling the objection of the defendant Salich to the admission of certain testimony of the witness G. B. Dierst, as specifically set forth in Assignment of Error XI.

(12) Error in overruling objection of defendant Salich to the admission of certain testimony of the witness G. B. Dierst, as specifically set forth in Assignment of Error XII.

(13) Error in denying the motion of the defendant Salich to strike certain testimony of the witness John H. Hansen, as specifically set forth in Assignment of Error XIII.

(14) Error in denying the motion of the defendant Salich to strike certain testimony of the witness Elias M. Zacharias, as specifically set forth in Assignment of Error XIV.

(15) Error in overruling the objection of the defendant Salich to the admission of certain testimony given by the witness Elias M. Zacharias, as specifically set forth in Assignment of Error XV.

(16) Error in denying the motion of the defendant Salich to strike certain testimony of the witness Elias M. Zacharias, as specifically set forth in the Assignment of Error XVI.

(17) Error in overruling the objections of the defendant Salich to the admission into evidence of certain written reports produced from the files of the office of the Naval Intelligence being a series of reports, all as specifically set forth in Assignments of Error XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLIX, L, LI, LII, LIII, LIV, LV, LVI, LVII, LVIII, LVIX.

(18) Error in overruling the objection of the defendant Salich to the admission into evidence of

certain testimony of the witness Henri deB. Clai-borne, as specifically set forth in Assignment of Error LX.

(19) Error in overruling the objection of the defendant Salich to the admission into evidence of certain testimony of the witness Henri deB. Clai-borne, as specifically set forth in Assignment of Error LXI.

(20) Error in denying the motion of the defend-ant Salich for a directed verdict which said motion was made at the close of the Government's case as specifically set forth in the Assignment of Error LXII.

(21) Error in overruling the objection of de-fendant Salich to the admission into evidence on behalf of the plaintiff of Government's Exhibit No. 8, as specifically set forth in Assignment of Error LXIII.

(22) Error in sustaining the objection of coun-sel for the plaintiff to a certain question asked of the witness Salich as specifically set forth in Assignment of Error LXIX.

(23) Error in sustaining the objection on be-half of the Government to introduction into evi-dence of defendant Salich's and Gorin's Exhibit A, being an article in Ken magazine, Volume 1, No. 1, April 7, 1938, on Page 40, specifically set forth in Assignment of Error LXX.

(24) Error in denying the motion of defendant

Salich for a directed verdict, as specifically set forth in Assignment of Error LXXI.

(25) Error of the Court in refusing to give to the jury certain instructions requested by the defendant Salich covering the question of the interpretation of the statute under which the prosecution in this action was had, to-wit, Title 50, United States Code, Sections 31, 32, and 34, as specifically set forth in Assignments of Error LXXII and LXXIII.

(26) Error of the Court in instructing the jury in regard to the interpretation of the statute under which the prosecution in this action was had, to-wit, Title 50 United States Code, Sections 31, 32, and 34, as specifically set forth in Assignments of Error LXXIV and LXXV.

(27) Error in denying the motion of defendant Salich for a new trial or for a judgment notwithstanding the verdict, as specifically set forth in Assignment of Error LXXVI.

Designation of Record

You and each of you will further take notice that said defendant Hafis Salich designates the parts of the record which he thinks necessary for the consideration of the said points on which said defendant intends to rely on the appeal, as follows:

The whole of the transcript of record on appeal as forwarded by the clerk of said district court in which the action was tried in so far as it concerns

the said defendant Hafis Salich, and as specifically set forth in Praeceptum for transcript of record on appeal delivered to the Clerk of said Court and forwarded as a part of the transcript of said record, and including the whole of the Bill of Exceptions in said action settled and allowed.

Dated: 19th of July, 1939.

WILLARD J. STONE, Jr.

Attorney for Appellant Hafis
Salich.

Received a copy of the within Defendant Salich's statement of points on which he intends to rely and designation of record.

This 20 day of July, 1939.

BEN HARRISON

By RALPH E. LAZARUS.

[Endorsed]: Filed Jul. 21, 1939. Paul P. O'Brien,
Clerk.

NO. 9135

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MIKHAIL NICHOLAS GORIN,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

**Upon Appeal from the District Court of the United
States for the Southern District of California,
Central Division**

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.**

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United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, October 2,
1939.

Before: Garrecht and Denman, Circuit Judges.

[Title of Cause.]

**ORDER GRANTING LEAVE TO FILE
ADDITIONAL ASSIGNMENTS OF ERROR.**

Upon consideration of the application of counsel for appellant, and stipulation of counsel for appellee, and by direction of the court, It ~~Is~~ Ordered that appellant be, and he hereby is granted leave to file two additional assignments of error to be numbered LXI and LXII.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, February
15, 1940.

Before: Garrecht, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeals in above cause argued by Mr. Isaac Pacht, counsel for appellant Gorin, and by Mr. Willard J. Stone, Jr., counsel for appellant, Salich, by Mr. Norman Neukom, Assistant U. S. Attorney, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, April 22,
1940.

Before: Garrecht, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPIN-
ION AND FILING AND RECORDING OF
JUDGMENTS.

By direction of the Court, Ordered that the type-
written opinion this day rendered by this Court in
above causes be forthwith filed by the clerk and
that judgments be filed and recorded in the min-
utes of this court in accordance with the opinion
rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeals from the District Court of the
United States for the Southern District of
California, Central Division.

Before: Garrecht, Haney and Healy,
Circuit Judges.

Haney, Circuit Judge.

Appellants challenge judgments and sentences
rendered against them after conviction on three
counts of an indictment. The first count charged
violation of §1 of the Act of June 15, 1917, Ch. 30,

40 Stat. 217 (50 USCA §31); the second count charged violation of §2 of that act (50 USCA §32); and the third count charged violation of §4 of that act (50 USCA §34). Generally speaking, these offenses relate to espionage.

One branch of the Navy service is the Naval Intelligence Office. Headquarters for the Eleventh Naval District are at San Diego, the intelligence office there being in charge of a District Intelligence Officer. A branch office is located at San Pedro and is in charge of an Assistant District Intelligence Officer. The investigators employed at the San Pedro office make their reports orally or in writing. The Assistant District Intelligence Officer then digests and evaluates the information and dictates the report to the Chief Yeoman—a secretarial employee. The latter, in writing the report on the typewriter, makes an original, three yellow copies and one green copy. These reports are numbered consecutively. One yellow copy and one green copy are retained in the San Pedro office and the remaining copies are sent to the San Diego office.

Appellant Salich was born in Moscow, Russia, on May 24, 1905, and lived there until 1917, when he moved with his parents to Kazen which is about 700 miles east of Moscow. He then went to Manchuria in 1920, to Yokohama, Japan, 1921, and to the United States in 1922. He became a naturalized citizen of the United States, and was employed by the Berkeley Police Department as an active officer from July 1, 1930 until August 15, 1936. In 1935,

Salich met one Aliavdin, Vice Consul for the Union of Soviet Socialist Republics (hereafter called the Soviet Union) in San Francisco, and thereafter saw him a number of times. In 1936, Salich made an application for a position with the United States Naval Intelligence Office. A letter from San Diego, dated August 10, 1936, advised Salich of his appointment, and he reported for work in San Pedro on August 19, 1936. At that time one Davis was District Intelligence Officer and one Roachefort was Assistant District Intelligence Officer. Salich thereafter saw Aliavdin in Los Angeles. Aliavdin knew that he was working for the Naval Intelligence Office.

Salich was an investigator and reported the results of his investigations to the Assistant District Intelligence Officer. He was expected to read the yellow copies of the reports which were kept in the Chief Yeoman's desk, in order to be familiar with the progress of investigations.

Appellant Gorin and his wife are citizens of the Soviet Union, and arrived in this country on January 10, 1936, under a passport issued by the Soviet Union. He then testified before a Board of Special Inquiry that he was to be employed in the Entourist Department of the Amtorg Trading Corporation, his salary to be paid by the Russian government through such corporation. His work was the organization of tourist parties from America to the Soviet Union. He was stationed at Los Angeles. Roachefort instructed Salich to contact someone in

the Soviet Consulate regarding the activities of a Soviet official named Kaganovich in July or August, 1937. Salich eventually contacted Gorin and had a conversation with him. Later during that year Gorin called at Salich's home, in the latter's absence, and told Salich's wife that he had a letter for Salich. A day or so afterward, Salich called at Gorin's home, found him busy, but saw him two or three days later, when he received the letter, written by Aliavdin introducing Gorin to Salich. At this meeting Gorin mentioned his interest in matters pertaining to Japanese activities and Japanese activities only. Salich told Gorin that he did not believe that he had any information which would be of benefit to anyone.

Salich reported the conversation to Roachefort. There was testimony that Roachefort ordered Salich to refrain from contacting Gorin. Salich testified that Roachefort told him to give Gorin such information as could be found in newspapers and periodicals, and try to obtain information from Gorin concerning the Japanese consulate. At any rate, after subsequent meetings and in March, 1938, Salich agreed to supply Gorin with certain information, on the theory that whatever information concerning the Japanese he gave to Gorin, it would benefit the United States as against the "common" enemy.

Davis was replaced as District Intelligence Officer on May 13, 1938 by one Zacharias. Roachefort was replaced as Assistant District Intelligence Officer on June 1, 1938.

Salich was in financial straits owing to marital difficulties and accepted a total of \$1,700 from Gorin for the information supplied to Gorin. Salich testified that the money received by him was considered a loan. Salich gave to Gorin the substance of the information contained in some 43 reports as related in the yellow copies previously mentioned.

On September 30, 1938, a salesman for a dry cleaning establishment took a suit belonging to Gorin, and in a pocket of the suit the salesman found an envelope containing a sheet of paper and a \$50 bill. The sheet of paper contained some type-writing and other writing. The salesman took the envelope to the Hollywood Police Station where a copy of the paper was made. The envelope and its contents were then given to Gorin's wife who had called at the cleaning establishment for it.

On December 10, 1938, several agents of the Federal Bureau of Investigation called at Salich's apartment and told him that they were making an investigation concerning information which he was supposed to have given Gorin. Salich agreed to, and did go to the office of the agents where he stated what he had done and identified the reports, the substance of which he had communicated to Gorin. The following day, Salich made a written statement containing some of the matters related above. Included in the statement was the following:

"Conscientiously and honestly I did not think that my actions, aside from being highly unethical, were inimical to the best interests of

the United States, to which country I am extremely grateful for what it did for me and which country's citizenship I value * * *

"I sincerely state that at no time did I furnish Gorin any information which in my opinion would harm this country; on the contrary, I saw some reason to Gorin's argument that we had common cause, and by helping them I would also be indirectly helping our own cause * * *"

The reports mentioned above were not physically given to Gorin. Salich communicated the substance thereof to Gorin orally or in writing. The reports consisted principally of a relation of the movements of certain Japanese from one place to another, and activities thereof, such as photography, conferences and other matters. A few reports dealt with Japanese activities in Mexico, Mexican waters and Central America, and a few reports concerned alleged communists and their activities. None of the reports contained any information regarding the army, the navy, any part thereof, their equipment, munitions, supplies or aircraft or anything pertaining thereto. One report named a number of Japanese "suspected" of being interested in intelligence work. Most of them, on their face, appear innocuous, there being no way to connect them with other material which the Naval Intelligence may have, so that the importance of the reports does not appear.

As illustrative of the information contained in the reports, we quote the report to Gorin made by Salich, found in Gorin's suit by the cleaning establishment's salesman:

"George Ohashi, of San Diego, is reported to have made a statement at a JACL meeting that he was not a fascist. Couple other members, Paul Nakadate and George Suzuki took exception to this remark and accused George Ohashi of being a communist and subsequently beat him up.

"Ohashi and his wife own a beauty shop in San Diego which was found burglarized one day and the place searched.

* * * * *

"Dr. M. M. Nakadate is dentist and is brother of Paul Nakadate.

"Their father is Y. Nakadate who lives in San Diego and who is listed in our cards as "radical"—pro-Japanese". Dr. N. M. Nakadate is borne in 1910; is member of United States Naval Reserve in dental corps and in 1935 did some training duty on board the USS Dorsey which is a destroyer. After completion of his sea duty he was attached to aviation unit of USNR, but because of his Japanese descent, it is evident, he is not being encouraged to continue his career with USNR.

"Bert Simmons a civilian employee on North Island, San Diego, which island houses Naval aviation. He was reported as a communist.

"The report, however, comes from a private watchman employed by Nick Harris Private Patrol. This watchman holds a dishonorable discharge from the Navy and it is believed that he made the report to ingratiate himself with the Navy. Report turned over to San Diego for further action."

One of the reports contained information regarding the activities of Japanese fishing boats, and of an acid said to have been deposited in salt water with which it reacted and caused a steel cable and a steel hull of a ship to be corroded through chemical action. This report was dated June 27, 1938. Practically everything which was contained in the report appeared in a printed periodical subsequently.¹ Other issues of the same periodical contained information of the same general nature as that contained in the reports.²

The indictment was filed on January 11, 1939. The first count thereof charged Salich, Gorin, and the latter's wife with copying, taking, making and obtaining documents, writings and notes of matters connected with the national defense, and describing the reports above mentioned. The second count charged defendants with communicating, delivering and transmitting to Gorin as a representative of

¹Ken Magazine, July 27, 1939, p. 9.

²Ken Magazine, Vol. 1, No. 1, p. 40, April 7, 1938; Ken Magazine, April 6, 1939.

the Soviet Union writings, notes, instruments and information relating to the national defense, and describing the same reports mentioned in the first count. The third count charged that the defendants conspired to communicate, deliver, transmit, and attempt to communicate, deliver and transmit to the Soviet Union and to a representative thereof, documents, writings, plans, notes, instruments and information relating to the national defense.

Each of the defendants demurred to the indictment, the demurrers all being overruled. Each of the defendants pleaded not guilty.

The trial court's instructions were comprehensive. As to the first count, the trial court instructed the jury that there were four elements to the crime therein charged: (1) the fact of taking or obtaining must be established; (2) there must be a purpose of obtaining information respecting the national defense; (3) there must be an intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of the Soviet Union; (4) the information so taken must, in fact, relate to the national defense.

The detailed instructions regarding the first two of these elements added little. As to the third element, the court below instructed the jury that appellee must "prove either an intent or a reason to believe that the information was to be used either to the injury of the United States or to the advantage of" the Soviet Union; that the law would

be satisfied if appellee proved "beyond a reasonable doubt that both Salich and Gorin had reason to believe that the information disclosed was to be used to the advantage of" the Soviet Union. The court also instructed the jury that they could consider the character of the information required, as to whether or not it was susceptible to use by the Soviet Union, and whether or not Salich knew facts from which he concluded, or reasonably should have concluded that the information could be used advantageously by the Soviet Union. The court below also charged the jury that if "there was no intent and no reason to believe on the part of either" Salich or Gorin, that "in so exchanging information that there would result an injury to the United States or advantage to" the Soviet Union, then the defendants must be acquitted.

As to the fourth element of the first count, the trial court instructed the jury that it was not required

"* * * that the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation. The document need not in fact be vitally important or actually injurious. The document or information must be, however, connected with or related to the national defense."

The court also instructed the jury as follows:

"You are instructed that the term 'national defense' includes all matters directly and reasonably connected with the defense of our

nation against its enemies. The first lines of defense naturally are the men, the ships and guns of the navy, the men, the planes and the guns of the air corps, and the men, forts and guns of the army. Behind these—but none the less necessary if the army and navy are to be kept in the field in wartime or well prepared in peacetime—are those places and things which are essential to the storage of reserves, the inter-communication of armed forces, the transportation of war supplies, the reconditioning of war-worn materials and men, and the manufacture of war supplies * * *

“You are instructed * * * that for purposes of prosecution under these statutes, the information, documents, plans, maps, etc., connected with these places or things [mentioned in the statute] must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation * * *

“You are instructed that in the second place the information, documents or notes must relate to those angles or phases of the instrumentality, place or thing which relates to the defense of our nation * * *

“You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability of any of the above

places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

"Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury * * *"

The detailed instructions under the first count also, contained many examples to further explain the last element. The elements of the crime charged in the second count were stated by the court below: (1) the fact of disclosure must be proved; (2) the disclosure must be made to representatives or citizens of the Soviet Union; (3) the guilty intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of the Soviet Union must be present; (4) the information so taken must, in fact, actually relate to the national defense. The detailed instructions as to each of these elements adds nothing to what has been related.

The court below instructed the jury to return a verdict that Gorin's wife was not guilty of the crimes charged in the first two counts. The jury acquitted Gorin's wife on the third count and convicted Gorin and Salich on all three counts, both of whom appealed from the judgment and sentence entered on the verdict.

The indictment is based on the Act of June 15, 1917, Ch. 30, 40 Stat. 217.³ It was entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes" and was divided into thirteen titles. The first title consisted of nine sections and is headed with the word "Espionage". All three counts of the indictment are based on provisions in the first title of the act.

Section 1 of the act, on which the first count was based, provides in part:

"That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation * * * (b) * * * copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense * * * shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both."

³See also: 34 USCA §1200, Article 4 "Fourth" and Article 5.

Section 2 of the act, on which the second count was based, provides in part:

"Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government * * * or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years * * *"

Section 4 of the act, upon which the third count is based, provides as follows:

"If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. * * *"

Section 2 also provided for increased penalties for violation thereof in time of war. Section 3 provided a crime for commission of acts only in time of war.

Construction of the Act.

Appellants contend that the words "respecting the national defense" and "connected with the national defense" as used in §1, and the words "relating to the national defense" as used in §2, should be given a military and naval connotation, and that they should be limited, in their application to the places and things specifically enumerated in §1 of the act. To properly understand the contention it should be noted that §1(a) of the act, which is not in question here, makes it a felony to obtain information "concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base; coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored * * *" The contention is, in effect, that the words just quoted define "national defense", so that when §1(b) forbids the copying of a "document, writing, or note, of anything connected with the national defense", it forbids such copying only if the document, writing, or note relates to or concerns a "ves-

sel, aircraft, work of defense", etc. as enumerated in §1(a).

To support the contention it is argued that §§1 and 2 are found in Title 50 of the United States Code entitled "War" and was therefore intended to apply only to persons who spy on the United States; that the rule of *ejusdem generis*, the legislative history, and grammatical incidents require such construction; and that any uncertainty in the act must be construed in favor of appellants.

We think the contention is untenable. "The intention of the Congress is to be sought for primarily in the language used, and where this expresses an intention reasonably intelligible and plain it must be accepted without modification by resort to construction or conjecture". *Thompson v. United States*, 246 U.S. 547, 551. See also: *Helvering v. City Bank Co.*, 296 U.S. 85, 89. It seems apparent beyond doubt, that §1 of the act specifies five different and separate crimes. Each crime is defined in a subsection ending with a semi-colon and preceded by a designation consisting of a letter contained in parentheses. Each is as separate as it would be if made a separate section in the act. There is no room for the application of rules of construction. None of these subsections refers to another. Nowhere is an intent manifested that "national defense" was actually defined in §1(a) or in any other subsection. In view of the plain meaning, we are not warranted in restricting the meaning of the words "national defense". Unquestionably, the

words were used in a broad sense with a flexible meaning. That meaning accords with the rule that "unless Congress has definitely indicated an intention that the words should be construed otherwise, we must apply them according to their usual acceptance". *Avery v. Commissioner*, 292 U.S. 210, 214. We think there is here no definite indication that a restricted meaning was intended.

What is or is not "connected with the national defense" is a question of fact for the determination of the jury. Like many words, what is meant by the use thereof may change from time to time. For example, the operation of an automobile in a particular way twenty years ago might have been negligence then, but not negligent now in view of the changes which have occurred since. So, particular things which were once "connected with the national defense" may have lost such connection. For example, the plans for making a muzzle-loading flintlock might have been at one time "connected with the national defense" but it is difficult to understand how it would be today when they are no longer used.

As in most jury cases, a question of law is present, i.e., whether the jury would be justified in inferring from the evidence that the fact existed.

We are not in accord with what may be said to be a contrary view as expressed in the instructions, where it is indicated that the information must relate to the places mentioned in subsection (a) of

§1. However, since the instructions as given were favorable to appellants, they are in no position to allege error in that respect.

Constitutionality of the Statute.

It is urged that under such construction, the statute is unconstitutional because it "would fix no immutable standard of guilt to govern conduct and would give no fixed and definite meaning * * * but would be subject to definition as to meaning by each court and jury". Violation of the Fifth and Sixth Amendments by the statute is urged. The Fifth Amendment prohibits deprivation of a person's life or liberty "without due process of law" and the Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right "to be informed of the nature and cause of the accusation".

Certain phases of the act have been considered, and the constitutionality thereof upheld. *Schenck v. United States*, 249 U.S. 47; *Frohwerk v. United States*, 249 U.S. 204; *Abrams v. United States*, 250 U.S. 616, 619. It is not at all clear that the questions raised here are open to decision, in view of the broad language of *O'Connell v. United States*, 253 U.S. 142, 147-148 and *Milwaukee Pub. Co. v. Burleson*, 255 U.S. 407, 409-410. However, in view of the fact that different sections of the act were involved in those cases, we will assume that the questions have not been definitely decided by the Supreme Court.

The so-called general rule relied on here, is stated in *Connally v. General Const. Co.*, 269 U.S. 385, 391, as follows:

“That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with the ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law
* * *

As early as *United States v. Brewer*, 139 U.S. 278, 288, it had been said that “Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid”. These rules, however, are subject to the same mischief which they seek to control, and do not aid in the solution of the question urged here. That conclusion necessarily follows the fact that many criminal statutes must be and are construed notwithstanding there are doubts as to their meaning. The rulings in particular cases must be considered.

The following statutes have been held sufficiently definite; denouncing contracts and arrangements

‘See also: *Fox v. Washington*, 236 U.S. 259, 277; *Whitney v. California*, 274 U.S. 357.

"reasonably calculated" to fix and regulate the price of commodities, and prohibiting acts which "tend" to accomplish the prohibited results;⁵ prohibiting certain things which "prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade";⁶ requiring a proprietor or keeper of hotel, in case of fire, to "do all in their power" to save guests;⁷ prohibiting sheep owner from permitting sheep to graze on any cattle range previously occupied by cattle, or upon any range "usually" occupied by any cattle grower as range for his cattle;⁸ prohibiting sales of meat falsely represented as "kosher" or as having been prepared of a product "sanctioned by the orthodox Hebrew religious requirements";⁹ requiring the quantity of the contents of a package to be marked on the outside thereof, provided that "reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations";¹⁰ and authorizing a state officer to "mutualize or reinsure the busi-

⁵*Waters-Pierce Oil Co. v. Texas* (No. 1), 212 U.S. 86, 109.

⁶*Nash v. United States*, 229 U.S. 373, 376.

⁷*Miller v. Stahl*, 239 U.S. 426, 431.

⁸*Omaechevarria v. Idaho*, 246 U.S. 343.

⁹*Hygrade Provision Co. v. Sherman*, 266 U.S. 497, 501.

¹⁰*United States v. Shreveport Grain & El. Co.*, 287 U.S. 77.

ness of" an insurance company "or enter into rehabilitation agreements".¹¹

On the other hand, the following statutes have been held too vague and indefinite: prohibiting the enhancement by combinations of the cost of any article above its "real value" which was construed to mean "market value under fair competition, and under normal market conditions";¹² providing that it was unlawful for any person willfully to make any "unjust or unreasonable rate or charge" in handling or dealing in or with any necessities;¹³ requiring payment to state employees of the "current rate" of per diem wages in the "locality" where the work is performed;¹⁴ providing that it was not unlawful to market products at a "reasonable profit" by agreement or association, which could not otherwise be so marketed;¹⁵ and declaring that a person not engaged in any lawful occupation, "known" to be a member of any "gang" who had been convicted of a crime was a "gangster".¹⁶

In logic, the statute here involved could be said to be analogous to some of the cases involved in the first group, and to be analogous to some of those involved in the second group. No workable state-

¹¹*Neblett v. Carpenter*, 305 U.S. 297, 303.

¹²*International Harvester Co. v. Kentucky*, 234 U.S. 216; *Collins v. Kentucky*, 234 U.S. 634, 638.

¹³*United States v. Cohen Grocery Co.*, 255 U.S. 81.

¹⁴*Connally v. General Const. Co.*, 269 U.S. 385.

¹⁵*Cline v. Frink Dairy Co.*, 274 U.S. 445, 456.

¹⁶*Lanzetta v. New Jersey*, 306 U.S. 451.

ment of differentiation is apparent from these decisions. Apparently the question has been decided in the above mentioned cases on the basis of appeal of the contention to the court in each individual case rather than by measurement with a definite rule. Because of the doubt as to the controlling group of cases, we assume that the rebuttable presumption of constitutionality¹⁷ has disappeared.¹⁸ However, the result is controlled by the rule that "It is incumbent, * * * upon those who affirm the unconstitutionality of an act of Congress to show clearly that it is in violation of the provisions of the Constitution. It is not sufficient for them that they succeed in raising a doubt". *Legal Tender Cases*, 79 U.S. (12 Wall.) 457, 531. We hold that appellants have failed to carry the burden of proving unconstitutionality of the statutes involved. We add that the words of the statutes "national defense" are similar to the words "common defense" as used in §8, Article I of the Constitution.

The Evidence.

Appellants contend that the court erred in failing to direct a verdict in their favor, because of insufficiency of evidence. The applicable rule is that if there is substantial evidence to support the

¹⁷*Borden's Co. v. Baldwin*, 293 U.S. 194, 209.

¹⁸*Del Vecchio v. Bowers*, 296 U.S. 280;
N. Y. Life Ins. Co. v. Gamer, 303 U.S. 161,
170-171;

Department of Water and Power v. Anderson, 9 Cir., 95 F(2d) 577, 583.

charges, then a peremptory instruction of acquittal should not be made, but it is a question for the jury to determine whether "the effect of the evidence was such as to overcome any reasonable doubt of guilt". *Pierce v. United States*, 252 U.S. 239, 251-252. Likewise, the effect and weight of the fair inferences to be drawn from the evidence for appellee is for the jury. *Gunning v. Cooley*, 281 U.S. 90, 94.

It is urged that the Naval Intelligence reports show on their face that they do not relate to the national defense. We think the contention cannot be sustained. It is unnecessary to state what inferences were properly deducible from all the reports. It is sufficient to consider one which is favorable to appellee. One of the reports named a number of Japanese "suspected" of being interested in intelligence work. The jury could properly infer, we think, that it is highly important to the Navy to know possible spy suspects, and that it is vital that the foreign government be ignorant of the Navy's knowledge, because if such government was aware of the Navy's knowledge, it would, conceivably, replace such agents with others, or direct them to cease their activities and employ others. It is likewise inferable that if the agents were aware of the Navy's knowledge they would take steps to hide any activity which might lead to their arrest and eradication. It is obvious that the detection of spies is important in the event of war, as shown by the

extreme penalty meted out for such offense. We think the jury could properly conclude from these inferences that the report "related" to the national defense.

It is also urged that intent consists of two elements, i.e., will and knowledge, and that while there was evidence of will, there was no evidence that appellants knew these reports "related" to the national defense, or that their acts were unlawful. Whatever refinement in the definition of intent can be made, it is clearly not controlling here. The statute does not require unconditionally an intent, for in the words of the statute "reason to believe" is said to be sufficient. The trial court properly so instructed. Considering the source of the information divulged, and the desire of Gorin to obtain it, we think the jury could properly infer that appellants had reason to believe that such information was "to be used to the injury of the United States, or to the advantage of" a foreign nation.

Error in the admission of the testimony of Commander Zacharias is also alleged. Zacharias was District Intelligence Officer, and a superior of Salich. His testimony was to the effect that he had specifically instructed Salich not to divulge any information. The court carefully instructed the jury that whatever Zacharias said was not to be taken as any statement of law, and that they should consider only the law communicated to them by the trial court. As so limited we see no error in the admission of the evidence. The proof was pertinent

because it had a bearing on Salich's "reason to believe".

It is also asserted that the exclusion of the Ken Magazine article was error. It is said that such article discloses that the information conveyed to Gorin was well known to the public and not confidential matters. While a serious question might arise in a case where the only information divulged was such as could be found in newspapers or periodicals available to the public, such question does not arise in this case, because the article in the periodical does not, and does not purport to relate all information contained in the reports in question. Assuming, without so deciding, that it was error to exclude the article insofar as it had a bearing on the same information contained in some of the reports, the record affirmatively discloses that the error was not prejudicial because the information in the other reports is not contained in the article. See *Lynch v. Oregon Lumber Co.*, 9 Cir., 108 F(2d) 283, 285-286.

We are, of course, conscious of the argument which could be made that the information divulged must not be of any importance or the Naval Intelligence Office would not have made the information available to the public by presenting the reports in evidence. Such procedure was a necessity in order to try the case. Whether it is sound, we think, is a question for the determination of Congress.

The Instructions.

The court's instruction as to the "national defense" is challenged, but we find no error therein except as stated above. It is urged that the instruction left it to the jury to speculate whether the information related to the national defense. As previously stated, we think the question is one of fact, and the decision thereof by the jury gives rise to no more or different speculation than the decision by a jury of any other fact question.

Finally, it is contended that the court erred in failing to give a requested instruction to the effect that if the jury acquitted Gorin's wife of the conspiracy charge, they must also acquit appellants, because if appellants conspired to convey the information to a representative of a foreign government, then there was no proof of anyone receiving the information from the transmitters.¹⁹ The judgment and sentence of the court makes it unnecessary to consider this contention. Gorin received a sentence of six years on the third count and six years on the second count, the terms to run concurrently. Salich received a sentence of four years on the third count and four years on the second count, the terms to run concurrently. It is therefore immaterial whether the judgments and sen-

¹⁹Appellants rely on: *United States v. Katz*, 271 U.S. 354; *United States v. Dietrich*, C.C. Neb., 126 F. 664; *United States v. New York, etc. R.R. Co.*, C.C. N.Y., 146 F. 298.

tences on the third count were right or wrong.
Brooks v. United States, 267 U.S. 432, 441.

Affirmed.

[Endorsed]: Opinion. Filed Apr. 22, 1940. Paul
P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9135

MIKHAIL NICHOLAS GORIN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Upon Appeal from the District Court of the
United States for the Southern District of California,
Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the
United States for the Southern District of California,
Central Division and was duly submitted.

On Consideration Whereof, It is now here
ordered and adjudged by this Court, that the judgment
of the said District Court in this Cause be,
and hereby is affirmed.

[Endorsed]: Filed and entered April 22, 1940.
Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES.**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seven hundred and thirty-six (736) pages, numbered from and including 1 to and including 736, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 8th day of May, 1940.

[Seal]

PAUL P. O'BRIEN,

Clerk.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

No. 9136

HAFIS SALICH, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

JUDGMENT

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

(Endorsed:) Judgment. Filed and entered April 22, 1940. Paul P. O'Brien, Clerk.

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SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 87

ORDER ALLOWING CERTIORARI—Filed June 3, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 88

ORDER ALLOWING CERTIORARI—Filed June 3, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8886)